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**Protracted conflicts in the GUAM area and their
implications for international peace, security and
development**

The situation in the occupied territories of Azerbaijan

**Letter dated 30 September 2009 from the Permanent
Representative of Azerbaijan to the United Nations
addressed to the Secretary-General**

On instructions from my Government, I have the honour to transmit herewith the report entitled "The armed aggression of the Republic of Armenia against the Republic of Azerbaijan: root causes and consequences" (see annex).

I should be grateful if you would have the present letter and the aforementioned report circulated as a document of the General Assembly, under agenda items 14 and 18 of its sixty-fourth session, and of the Security Council.

(Signed) Agshin Mehdiyev
Ambassador
Permanent Representative



Annex to the letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

The armed aggression of the Republic of Armenia against the Republic of Azerbaijan: root causes and consequences

I. Introduction

1. At the end of 1987, the Armenian Soviet Socialist Republic (hereinafter Armenian SSR) openly laid claim to the territory of the Nagorny Karabakh Autonomous Oblast (hereinafter NKAO) of the Soviet Socialist Republic of Azerbaijan (hereinafter Azerbaijan SSR). That marked the beginning of the expulsion of Azerbaijanis from the Armenian SSR and the NKAO, as well as initiated taking a number of illegal decisions aimed at unilateral secession of the NKAO from the Azerbaijan SSR.

2. The collapse of the USSR finally freed the hands of the Armenian nationalists. At the end of 1991 and the beginning of 1992 the conflict reached the military phase. Armenia began combat operations on the territory of Azerbaijan. Over the period of 1992-1993 a considerable area of Azerbaijan was occupied by Armenia, including Nagorny Karabakh and seven adjacent districts. The war unleashed against Azerbaijan led to the deaths and wounding of thousands of people; hundreds of thousands became refugees and were forcibly displaced and several thousand disappeared without a trace. Most serious international crimes have been committed in the course of the war.

3. In general, the legal and political constituents for the settlement of the conflict are based on the norms and principles of international law, laid down in the relevant Security Council and General Assembly resolutions, as well as in the appropriate documents and decisions of the Organization for Security and Cooperation in Europe (OSCE) and other international organizations. These documents confirm, *inter alia*, that the occupation by force of the territories of the Republic of Azerbaijan constitutes a flagrant breach by the Republic of Armenia of the territorial integrity of the Republic of Azerbaijan.

4. By letters dated 22 and 26 December 2008, and 23 January and 17 February 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, the Republic of Azerbaijan submitted the reports on "the legal consequences of the armed aggression of the Republic of Armenia against the Republic of Azerbaijan",¹ on "the fundamental norm of the territorial integrity of states and the right to self-determination in the light of Armenia's revisionist's claims",² on "the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory"³ and the information entitled "Support by Member States of the United Nations and international

¹ A/63/662-S/2008/812, 24 December 2008.

² A/63/664-S/2008/823, 29 December 2008.

³ A/63/692-S/2009/51, 27 January 2009.

organizations to Azerbaijan's position on the conflict in and around the Nagorny Karabakh region of Azerbaijan",⁴ respectively.

5. In these documents the Republic of Azerbaijan formulated its view and approach as to the issues pertaining to the resolution of the conflict on the basis of the applicable norms and principles of international law.

6. The Permanent Representative of Armenia to the United Nations by his letter dated 23 March 2009 circulated the memorandum entitled "Nagorny Karabakh: peaceful negotiations and Azerbaijan's militaristic policy"⁵ that purports to be a response to the aforementioned documents submitted by Azerbaijan.

7. In reality, this document represents yet another attempt of the Republic of Armenia to mislead the international community by means of blatant falsification of facts and thus to justify its annexationist policy.

8. It is curious that while listing in the aforementioned memorandum a number of declaratory documents on the conflict, the Armenian side omits referring to the relevant resolutions of the Security Council⁶ and General Assembly,⁷ which are the most authoritative rulings on the problem, as well as to other important documents adopted by international organizations, such as a statement by the OSCE Chairman-in-Office at the OSCE Lisbon Summit of 1996, supported by all OSCE participating states except Armenia, and resolution 1416 (2005) adopted on 25 January 2005 by the Parliamentary Assembly of the Council of Europe.

9. On 2 November 2008, the Presidents of Armenia, Azerbaijan and the Russian Federation signed a Joint Declaration in Moscow. This document states, inter alia, that the signatory states "will work towards improving the situation in the South Caucasus and establishing stability and security in the region through a political settlement of the Nagorny Karabakh conflict, on the basis of the principles and norms of international law and the decisions and documents adopted in this framework, which will create favorable conditions for economic development and comprehensive cooperation in the region".

10. It should be noted in this regard that in the aforementioned memorandum circulated at the request of Armenia the document signed by the heads of three states is referred to as the "Declaration on Nagorny Karabakh conflict",⁸ though, in reality, it is entitled "Joint Declaration of the Republic of Armenia, the Republic of Azerbaijan and the Russian Federation".⁹ Further to this misinterpretation, whereas the signatory states declare in the Joint Declaration that "they will work towards improving the situation in the South Caucasus and establishing stability and security in the region through a political settlement of the Nagorny Karabakh conflict, on the basis of the principles of international law and the decisions and documents adopted

⁴ A/63/730-S/2009/103, 20 February 2009.

⁵ A/63/781-S/2009/156, 24 March 2009.

⁶ Resolutions 822 (1993) dated 30 April 1993; 853 (1993) dated 29 July 1993; 874 (1993) dated 14 October 1993 and 884 (1993) dated 12 November 1993.

⁷ Resolutions 48/114 dated 20 December 1993, 60/285 dated 7 September 2006, and 62/243 dated 14 March 2008.

⁸ A/63/781-S/2009/156, p. 5, para. 10.

⁹ See the annex to the letter dated 10 November 2008 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, S/2008/702.

in this framework ...”, the Armenian memorandum drops the reference to such important words as “the decisions and documents adopted in this framework” and thus grossly distorts the content of the document signed by the heads of three states.¹⁰

11. The Joint Declaration clarifies that “a political settlement ... will create favorable conditions for economic development and comprehensive cooperation in the region”. This indication makes speculations of the Armenian side as to the “blockade imposed on Armenia”¹¹ absolutely irrelevant. In fact, it confirms the validity of Azerbaijan’s view, according to which any cooperation with Armenia is unacceptable unless this state clearly demonstrates its constructiveness on the settlement of the conflict resulting in putting an end to the occupation of the territories of Azerbaijan.

12. By disregarding the resolutions of the Security Council and General Assembly, with which the primary responsibility for maintenance of international peace and security lies, and by misinterpreting the essence of other relevant documents, including the Joint Declaration signed in Moscow by the Presidents of Armenia, Azerbaijan and the Russian Federation, Armenia clearly demonstrates who is actually pursuing the destructive and militaristic policy.

13. Armenia blames Azerbaijan for increasing its military budget and violation of arms limitation norms. At the same time, it omits to say that annual defence spending of Azerbaijan remains in line with overall budget increases, that Azerbaijan continues to spend a much smaller percentage of its gross domestic product (GDP) on the army than Armenia and that the size of the armed forces of Azerbaijan is proportional to its population, territory and length of borders and remains less than Armenia’s.¹² Armenia also passes over in silence that the arms control mechanism is not effective in the occupied territories of Azerbaijan and that it deploys, beyond international control, a great number of armaments and ammunitions in these territories.

14. Furthermore, Armenia acknowledges in the said memorandum that it considers the Nagorny Karabakh problem as one that dates back to the distant past.¹³ Against this background, it makes a series of historical assertions that distort the very essence of the problem and carry a danger of revisionist claims based upon historical arguments, the objective of which in fact is to substantiate the policy of territorial expansionism at the expense of not only Azerbaijan but other neighbouring states likewise. In other words, Armenia confirms that its territorial claims towards and military actions against Azerbaijan were aimed from the very beginning at seizing the territories by means of force and fundamental change of their demographic composition.

15. While accusing Azerbaijan of “anti-Armenian propaganda, instilling racial hatred and intolerance against the Armenians”,¹⁴ Armenia disregards the fact that, unlike itself, which has purged its territory of all non-Armenians and become a

¹⁰ A/63/781-S/2009/156, p. 5, para. 10.

¹¹ Ibid., p. 14, para. 46.

¹² See, e.g., *Azerbaijan: Defence Sector Management and Reform*, International Crisis Group policy briefing No. 50, 29 October 2008, p. 5.

¹³ A/63/781-S/2009/156, p. 7, para. 21 and further.

¹⁴ Ibid., p. 2.

uniquely mono-ethnic state, Azerbaijan has preserved its ethnic diversity to the present day.

16. Instead of trying to contribute to restoring peace, security and stability in the region and putting an end to the protracted conflict, Armenia, which bears the primary responsibility for unleashing war against Azerbaijan, gives preference to escalation with unpredictable consequences. The stance of Armenia, as it is reflected in the aforementioned memorandum and other similar documents and statements, testifies that it is far from even thinking to engage in a sober and efficient search for peace.

17. The Republic of Azerbaijan considers the provocative attitude of Armenia and its bellicose rhetoric as an open challenge to the ongoing peace efforts and political settlement perspectives, unconcealed propaganda for war of aggression and a serious threat to regional peace and security.

18. The information below is illustrative as to the aggressive, annexationist and discriminatory policy of Armenia based on historical, ethnic and religious prejudices and aimed at creating a mono-ethnic culture both within its own country and in the occupied territories of Azerbaijan.

19. In this regard, Azerbaijan expects that Member States would convince Armenia to cease its destructive policies, to respect the generally accepted norms and principles of international law and to negotiate in good faith with a view to finding a durable solution to the conflict.

II. Historical background

20. The Nagorny Karabakh region of the Republic of Azerbaijan is part of the geographical area called Garabagh (*Qarabağ*). The name of this part of the country consists of two Azerbaijani words: "qara" (black) and "bağ" (garden).¹⁵ The geographical area of Karabakh covers the lands from the Araz River in the south to the Kur River in the north, and from the junction of the Kur and Araz Rivers in the east to the eastern ranges of the Lesser Caucasus in the west.

21. From ancient times up to the occupation by Russia in the early 19th century, this region was part of different Azerbaijani states. On 14 May 1805, the Treaty of Kurakchay (1805) between Ibrahim Khan, Khan of Karabakh, and Sisianov, representative of the Russian Emperor, was signed. According to this treaty, the Karabakh khanate came under Russian rule.

22. The Gulistan peace treaty, signed between Russia and Iran on 12 October 1813, de jure recognized the joining to Russia of the Northern Azerbaijan khanates, with the exception of the Nakhchivan and Iravan khanates. According to the Turkmanchay peace treaty, signed on 10 February 1828 — at the end of the second Russia-Iran war (1826-1828) — Iran confirmed its relinquishment of Northern Azerbaijan, including the Nakhchivan and Iravan khanates.

¹⁵ The term "Nagorny Karabakh" is a Russian translation of the original name in Azerbaijani language — Dağlıq Qarabağ (pronounced Daghlygh Garabagh), which literally means mountainous Garabagh. In order to avoid confusion the widely referred terms "Nagorny Karabakh" or "Karabakh" will be used here, as appropriate.

23. After the signing of the Gulistan and Turkmanchay treaties a very rapid mass resettlement of Armenians in the Azerbaijani lands took place and the subsequent artificial territorial division emerged.¹⁶ The First World War also contributed to the increase in the number of Armenians in the South Caucasus.¹⁷ From 1828 to 1911 alone, more than 1,000,000 Armenians were resettled by Russia from Iran and Turkey in the region, including the Azerbaijani territories, and 350,000 Armenians appeared there in 1914-1916.

24. Within the Russian Empire, the territory once belonging to Azerbaijan — which includes, inter alia, the area presently covered by the Republic of Azerbaijan and the Republic of Armenia — was split under a number of legal regimes in different administrative divisions. According to the final administrative division, Azerbaijan was split among the Baku, Elizavetpol and Iravan provinces, and Zagatala okrug. The Elizavetpol province included, inter alia, the area presently under Armenian military occupation.

25. Between 1905 and 1907 the Armenians carried out a series of large-scale bloody actions against the Azerbaijanis. The atrocities began in Baku and then extended over the whole of Azerbaijan, including Azerbaijani villages in the territory of present-day Armenia. Hundreds of settlements were destroyed and wiped from the face of the earth, and thousands of civilians were barbarically killed.

26. Taking advantage of the situation following the First World War and the February and October 1917 revolutions in Russia, the Armenians began to pursue the implementation of their plans under the banner of Bolshevism. Thus, under the watchword of combating counter-revolutionary elements, in March 1918 the Baku commune began to implement a plan aimed at eliminating the Azerbaijanis from the whole of the Baku province. Apart from Baku, solely because of their ethnic affiliation, thousands of Azerbaijanis were annihilated also in the Shamakhy and Guba districts, as well as in Karabakh, Zangazur, Nakhchivan, Lankaran and other regions of Azerbaijan. In these areas, the civilian population was exterminated en masse, villages were burned and national cultural monuments were destroyed and obliterated.

27. On 28 May 1918, the Democratic Republic of Azerbaijan was proclaimed. The Republic of Armenia was established the same day. Article 1 of the Declaration of Independence of the Democratic Republic of Azerbaijan provided that "[s]tarting from this day the people of Azerbaijan will have their sovereign rights. Azerbaijan that consists of Eastern and Southern Transcaucasia shall be a legal independent state".

¹⁶ See, e.g., I. Shopen, *Historical monument of the status of the Armenian oblast in the period of its annexation to the Russian Empire* (Saint-Petersburg: Publishing House of the Emperor's Academy of Sciences, 1852), pp. 636, 639-641, 706; N. Shavrov, *A new challenge to the Russian issue in Transcaucasia: Upcoming sale of Mughan to foreigners* (Saint-Petersburg: Publishing House of the Editorial Board of the Ministry of Finance Periodicals, 1911), pp. 59-60.

¹⁷ See, e.g., *History of the Armenian people* (Yerevan: Yerevan University Press, 1980), p. 268; *Compilation of statistical data of the Caucasus* (Tiflis, 1869), volume I, chapter I, part III; *Caucasian calendar for 1917* (Tiflis: Press Office of the Governor-General E.I.B of the Caucasus, 1916), pp. 183, 219-221; *Acts of the Archeological Commission of the Caucasus* (Tiflis, 1870), volume IV, doc. 37, p. 37.

28. In 1918-1920, the Democratic Republic of Azerbaijan had diplomatic relations with a number of states. Agreements on the principles of mutual relations were signed with some of them; 16 states established their missions in Baku.

29. With the purpose of achieving the admission to the League of Nations, the Government of Azerbaijan formed on 28 December 1918 the delegation at the Paris Peace Conference headed by the speaker of parliament Alimardan bay Topchubashov. As a result of the efforts of the Azerbaijani delegation and growing threat of occupation of Transcaucasia by Soviet Russia, the Supreme Council of the Allied Powers at the Paris Peace Conference de facto recognized on 12 January 1920 the independence of the Democratic Republic of Azerbaijan.

30. In April 1919, the Allied Powers recognized the provisional General-Governorship of Karabakh, which was established by the Democratic Republic of Azerbaijan in January 1919 and included Shusha, Javanshir, Jabrayil, and Zangazur uyezds (uyezd — administrative-territorial unit of the Russian Empire, which was applied in the Democratic Republic of Azerbaijan and Azerbaijan SSR until the late 1920s) with the centre in Shusha town, to be under Azerbaijani jurisdiction, and Khosrov bay Sultanov as its governor. In 1919, the Armenian National Assembly of Nagorny Karabakh officially recognized the authority of Azerbaijan.¹⁸ This fact completely disproves the allegations of the Armenian side that Nagorny Karabakh possessed at that time the status of “an independent legal entity”¹⁹ or “an independent political unit”.²⁰

31. The population welcomed the “provisional agreement” warmly and hopefully. Celebrations were held in Shusha in honour of the agreement that brought peace and order to Karabakh. The delegation of Karabakh Armenians²¹ at the meeting in Baku with Prime Minister of Azerbaijan N. Yusifbayov expressed deep gratitude to the Government of Azerbaijan for “the peaceful resolution of the Karabakh problem”. The adoption of the agreement meant the failure of the policy of Armenia to declare Nagorny Karabakh the “territory of Armenia”. The Democratic Republic of

¹⁸ Provisional agreement between the Government of Azerbaijan and the Armenians of Nagorny Karabakh, 26 August 1919 *roza*. For text, see *To the History of Formation of the Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925: Documents and Materials* (Baku: Azerneshr, 1989), pp. 23-25. See also Tadeusz Swietochowski, *Russia and Azerbaijan: A Borderland in Transition* (New York: Columbia University Press, 1995), pp. 75-76.

¹⁹ See, e.g., A/63/781-S/2009/156, p. 7, para. 23.

²⁰ See, e.g., *Legal aspects for the right to self-determination in the case of Nagorny Karabakh*, Annex to the note verbale dated 21 March 2005 from the Permanent Mission of Armenia to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights, E/CN.4/2005/G/23, 22 March 2005, p. 2.

²¹ Note: Russia's plans to occupy Turkey also sealed the fate of the Caucasian Albanians adhering to Christianity. Caucasian Albanians are one of the ancestors of the Azerbaijani people. They had their own state, which existed from the 4th century BC to the early 8th century on the territory from the Araz River in the south to Darband in the north, had declared Christianity the State's official religion in the 4th century. After the conquest of Arabs in the early 8th century, most of the Albanians adopted Islam, while a small part adhered to Christianity. However, beginning from the early 19th century, after the signing of the Gulistan and Turkmanchay treaties, the independent Albanian Catholicosate was liquidated; its dioceses were annexed to the Armenian Echmiadzin Catholicosate and the Caucasian Albanians adhering to Christianity — with the exception of those living in the Gabala and Oghuz districts of Azerbaijan — were assimilated by Armenians. The present-day Armenian population of the Nagorny Karabakh region of Azerbaijan, with the exception of those resettled there later, mostly consists of the Armenianized Albanians.

Azerbaijan, for the first time in the South Caucasus, through guaranteeing rights of the Armenians of Nagorny Karabakh, set in practice an example of a peaceful and civil solution to the problem of minority groups.

32. Scotland-Liddel, a British journalist, wrote to London from Shusha: "[p]eace came to Karabakh. The Armenians agreed to obey the Azerbaijani government ... The Armenians tell me that there has never been such order and peace in Shusha and Karabakh before".²² He adds further: "[b]oth people were ready to continue peacefully their course of life and would do so, if not for the intervention of agitators. I believe that — the latter are responsible for the Armenian-Tartar [read Armenian-Azerbaijani — ed.] massacre in other parts of Transcaucasia. An Armenian propagandist does its job conscientiously, as it concerns propaganda, but I am sure that their activities in Transcaucasia are mere provocation".²³

33. All aforementioned facts testify against the allegations of the Armenian side that "[f]ollowing the collapse of the Empire, Nagorny Karabakh (with 95 per cent of Armenian population) refused to subject itself to the authority of the Democratic Republic of Azerbaijan" and that "[t]he newly proclaimed Democratic Republic of Azerbaijan resorted to military means to suppress the peaceful resolve of the people of Nagorny Karabakh for self-determination".²⁴

34. However, Armenia did not give up its claim on Nagorny Karabakh and, with the view of imposing an Armenian administrative system in Nagorny Karabakh, intensified provocative actions there.

35. While the Bolsheviks were approaching the Azerbaijani borders and the major part of Azerbaijani forces was concentrated in the country's northern borders, on the night of Nowruz Bayramy (Spring Holiday) on 22-23 March 1920, a large-scale armed uprising against the Azerbaijani government was incited in Nagorny Karabakh with the direct involvement and participation of Armenia. Azerbaijani national army units were simultaneously and suddenly attacked in Shusha, Khankandi and in a number of other places. Thus, the Armenian side unilaterally violated the "provisional agreement". The insurgents, however, met with serious resistance from the Azerbaijani soldiers. The day after the uprising, Shusha was liberated of the armed bands, and the attempts of Armenia to capture Azerbaijani territories failed.

36. Armenia's territorial claims towards Azerbaijan and efforts to annex Nagorny Karabakh were an evident reality for most authors in the former Soviet Union, including Armenian ones. Thus, according to the Great Soviet Encyclopedia published in 1926, "[d]ashnaks ... stated to have claims on the Akhalkalaki and Borchaly regions of Georgia, and Karabakh, the Nakhchivan region and the southern part of the large Yelizavetpol province, which were parts of Azerbaijan. The efforts to forcefully annex those areas caused a war with Georgia (December 1918) and a long, bloody confrontation with Azerbaijan ...".²⁵

37. On 28 April 1920, the Democratic Republic of Azerbaijan was occupied by Soviet Russia and the Azerbaijan SSR was established.

²² State Archive of the Republic of Azerbaijan, f. 894, inv. 10, f. 103, p. 18.

²³ Ibid., p. 11.

²⁴ A/63/781-S/2009/156, p. 7, paras. 21-22.

²⁵ Great Soviet Encyclopedia (Moscow: "Soviet Encyclopedia" JSC, 1926), vol. 3, p. 437.

38. Nonetheless, in many parts of the country the Azerbaijanis offered serious resistance to the Bolsheviks, while the Azerbaijani delegation at the Paris Peace Conference continued its work to achieve de jure recognition and admission into the League of Nations. By a letter dated 1 November 1920, the head of the Azerbaijani Delegation at the Conference requested the Secretary-General of the League of Nations to submit to the Assembly of the League an application for the admission of the Democratic Republic of Azerbaijan into the full membership of the Organization.

39. In the Memorandum dated 24 November 1920, the Secretary-General of the League of Nations formulated the following two key issues which would have been considered in regard to the application submitted by Azerbaijan:

"The territory of Azerbaijan having been originally part of the Empire of Russia, the question arises whether the declaration of the Republic in May 1918 and the recognition accorded by the Allied Powers in January 1920 suffice to constitute Azerbaijan de jure a 'full self-governing State' within the meaning of Article 1 of the Covenant of the League of Nations.

Should the Assembly consider that the international status of Azerbaijan as a 'fully self-governing State' is established, the further question will arise whether the Delegation by whom the present application is made is held to have the necessary authority to represent the legitimate government of the country for the purpose of making the application, and whether that Government is in a position to undertake the obligations and give the guarantees involved by membership of the League of Nations."²⁶

40. As to the first issue, the most important part of the mentioned Memorandum of the Secretary-General relates to the "Juristic observations", which reminds of the conditions governing the admission of new Members to the Organization contained in Article 1 of the Covenant of the League of Nations,²⁷ including the requirement to be a fully self-governing state. It is obvious that the state, a considerable part of the territory of which was occupied by the time of consideration of its application in the League of Nations, and yet the Government that submitted this application was overthrown, could not be regarded as fully self-governing in terms of Article 1 of the Covenant of the League of Nations.

41. In addressing the second issue, the Secretary-General of the League of Nations pointed out in his Memorandum that the mandate of the Azerbaijani delegation attending the Paris Peace Conference derived from the government that had been in power at Baku until April 1920. Thus, attention in the Memorandum is distinctly paid to the fact that at the time of submission by the Azerbaijani delegation of the application (1 November 1920) and the publication date of the Memorandum (24 November 1920) the government of the Democratic Republic of Azerbaijan, which issued the credentials to the delegation, was not actually in power since April 1920. It was further noted in the Memorandum that this Government did not exercise authority over the whole territory of the country.

²⁶ League of Nations. *Memorandum by the Secretary-General on the Application for the Admission of the Republic of Azerbaijan to the League of Nations*. Assembly Document 20/48/108.

²⁷ See also *The Covenant of the League of Nations* (1919), in Malcolm D. Evans (ed.), *Blackstone's International Law Documents* (Oxford: Oxford University Press, 6th ed., 2003), pp. 1-7, at p. 1, Article I.

42. Therefore, the Fifth Committee of the Assembly of the League of Nations in its resolution on the application of Azerbaijan decided that "it is not desirable, in the present circumstances, that Azerbaijan should be admitted to the League of Nations". It is clear from the text of the said resolution that under "the present circumstances" the Fifth Committee, which made no reference to Nagorny Karabakh at all, understood only that "Azerbaijan does not seem to possess a stable government with jurisdiction over a clearly defined territory".²⁸ Thus, these were just those reasons, derived from the requirements set forth in Article I of the Covenant of the League of Nations, which had prevented Azerbaijan from being admitted to the Organization.

43. The aforementioned documents of the League of Nations prove that the Armenian side is mistaken, to say the least of it, believing that the League of Nations "recognized the disputed status of Nagorny Karabakh"²⁹ and "refused to recognize Azerbaijan because of its claims over the Armenian-populated territories in Eastern Transcaucasia, namely Nagorno-Karabakh".³⁰

44. At the same time, the League of Nations did not consider Armenia itself as a state and proceeded from the fact that this entity had no clear and recognized borders, neither status nor constitution, and its government was unstable. As a result, the admission of Armenia to the League of Nations was voted down on 16 December 1920.³¹

III. Expansion of the territory of Armenia and change of the demographic composition of its population in the Soviet period

45. The facts illustrate that over the 70 years of Soviet rule Armenia succeeded in expanding its territory at the expense of Azerbaijan and using every possible means to expel the Azerbaijanis from their lands. During this period, the aforementioned policy was implemented systematically and methodically.

46. As for the territory of Armenia, according to Armenian scholars, on the basis of the Treaty of Batoum signed by Turkey with Azerbaijan, Georgia, and Armenia on 4 June 1918, the territory of the first Armenian state in the South Caucasus established on 28 May 1918 — with the capital, which was conceded by Azerbaijan

²⁸ League of Nations, Fifth Committee, *Admission of New Members. Resolution on the request for admission made by Azerbaijan*, Assembly Document 127.

²⁹ A/63/781-S/2009/156, p. 8, para. 26.

³⁰ See, e.g., the statement on behalf of Vartan Oskanian, Minister of Foreign Affairs of Armenia, at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa, 31 August-7 September 2001, www.un.org/WCAR/statements/armeniaE.htm; the initial report of Armenia under the International Covenant of Economic, Social and Cultural Rights, E/1990/5/Add.36, 9 December 1998, p. 3, paras. 3 and 17 (a).

³¹ League of Nations, Annex 30 B, *Future status of Armenia. Memorandum addressed to by the Council of the League of Nations*, meeting in Paris on 11 April 1920. League of Nations Document 20/41/9, p. 27; see also *Admission of new Members to the League of Nations. Armenia*, Assembly Document 209, pp. 2-3; Assembly Document 251.

on 29 May 1918³² — formed a minimum of 8,000,³³ 9,000³⁴ and a maximum of 10,000 sq. km³⁵ in the western part of present-day Armenia. During the existence of this Armenian state from 1918-1920, it failed to expand its territories at the expense of neighbours.

47. On 30 November 1920, after the occupation of the Democratic Republic of Azerbaijan by Bolshevik Russia, with the aim of sovietization of Armenia, the western part of Zangazur uyezd was included in Armenia. As a result, the Nakhchivan region was cut off from the main body of Azerbaijan.

48. From 12 March 1922 to 5 December 1936 Azerbaijan, Georgia and Armenia formed the Transcaucasian Soviet Federative Socialist Republics (hereinafter TSFSR). Until the admission of Azerbaijan into the TSFSR, the Basarkechar region of New-Bayazid uyezd, together with two thirds of Sharur-Daralayaz uyezd, had already been included in Armenia. After the admission of Azerbaijan into the TSFSR a considerable portion of Gazakh uyezd, a number of villages from Jabrayil uyezd and from the Autonomous Soviet Socialist Republic of Nakhchivan were included in Armenia.

49. Thus, due to "sovietization," the territory of Armenia increased from 8,000-10,000 sq. km to 29,800 sq. km, mostly at the expense of Azerbaijani lands.

50. During the Soviet period the immigration of a great number of Armenians from abroad and expulsion of Azerbaijanis from their lands took place. Thus, as per Armenian sources, about more than 42,000 Armenians arrived in Armenia between 1921 and 1936.³⁶ The next step towards the artificial change of the demographic composition of the population in Armenia was a decree by J. Stalin in November 1945 on the immigration of foreign Armenians, according to which Armenia received more than 50,000 immigrants in 1946, 35,400 in 1947, and about 10,000 in 1948.³⁷

51. On the pretext of resettling the Armenians coming from abroad, the Council of Ministers of the USSR adopted on 23 December 1947 and 10 March 1948 special decisions on the resettlement of collective farm workers and the other parts of the Azerbaijani population from the Armenian SSR to the Kur-Araz lowlands in the Azerbaijan SSR. Under these decisions, during the period between 1948 and 1953 more than 150,000 Azerbaijanis were forcibly resettled from their historical homelands — the mountainous regions of Armenia — to the then waterless steppes of Mughan and the Mil plateau. At the same time, by mid 1961, 200,000 Armenians

³² See, e.g., *State Archive of Political Parties and Social Movements of the Republic of Azerbaijan*, f. 970, inv. 1, f. 1, p. 51.

³³ See, e.g., G. Galoyan, *Struggle for the Soviet rule in Armenia* (Moscow: State Publishing House of Political Literature, 1957), p. 92.

³⁴ See, e.g., S. P. Agayan, *Great October and struggle of labours in Armenia for the victory of the Soviet rule* (Yerevan: Publishing House of the Academy of Sciences of the Armenian SSR, 1962), p. 174; E. C. Sarcissian, *Expansionary policy of the Ottoman Empire in Transcaucasia on the eve and in the years of the First World War* (Yerevan: Publishing House of the Academy of Sciences of the Armenian SSR, 1962), p. 365.

³⁵ See, e.g., *History of the Armenian people*, p. 283.

³⁶ *Ibid.*, p. 336.

³⁷ *Ibid.*, p. 366.

immigrated to Armenia³⁸ and between 1962 and 1973 the number of immigrants consisted of 26,100 people.³⁹

52. Shortly after the assertion of claims on Nagorny Karabakh at the end of 1980s, the remaining 200,000 Azerbaijanis were forcibly deported from Armenia.

IV. The Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR

53. As the Armenian side insists, "[o]n 30 November 1920, the Soviet Government of Azerbaijan adopted a Declaration on recognition of Nagorny Karabakh as an integral part of Soviet Armenia as a welcome act towards the victory of Soviet forces in the country", while "[o]n 21 June 1921, the Government of Soviet Armenia, based on Azerbaijan's Declaration and the agreement with the Azerbaijani Government, issued a Decree recognizing Nagorny Karabakh as an integral part of Soviet Armenia". The Armenian side further claims that "[t]hese documents were registered in the League of Nations resolution of 18 December 1920, and in the 1920/21 annual report of the Ministry of Foreign Affairs of Russia, respectively".⁴⁰ In this regard, the following observations need to be made.

54. After the occupation of the Democratic Republic of Azerbaijan on 28 April 1920 by Bolshevik Russia, on 19 June 1920, S. Orjonikidze, head of the Caucasian Bureau of the Central Committee of the Russian Communist (*Bolshevik*) Party sent a telegram to G. Chicherin, People's Foreign Affairs Commissioner of Russian Soviet Federative Socialist Republic, stating that Soviet rule is declared in Karabakh and Zangazur and they "consider themselves to be part of the Soviet Republic of Azerbaijan".⁴¹

55. The Azerbaijan SSR covered the following areas as described in the document dated 5 August 1920 from the Central State Archive of the Red Army:

"The territory of Azerbaijan covers the whole of Ganja province and all uyezds of Surmali, Nakhchivan and Sharur-Daralayaz of the Erivan province, as well as the southern part of Erivan province with villages of Kamarli, Boyuk-Vedi and Davali and the eastern part of Novo Bayazet".⁴²

56. Dashnak Armenia, the independence of which, due to the growing threat from the Bolsheviks, was de facto recognized by the League of Nations on 19 January 1920,⁴³ i.e. 7 days following the de facto recognition of Azerbaijan and Georgia by the League of Nations, i.e. on 12 January,⁴⁴ was shortly replaced by "Soviet" Armenia in the winter of 1920-1921.

³⁸ *Documents of Foreign Policy of the USSR* (Moscow: State Publishing House of Political Literature, 1962), volume 6, note 33, p. 611.

³⁹ *History of the Armenian people*, p. 418.

⁴⁰ A/63/781-S/2009/156, p. 8, paras. 27-29.

⁴¹ *State Archive of Political Parties and Social Movements of the Republic of Azerbaijan*, f. 609, in. 1, f. 21, p. 100.

⁴² *Central State Archive of Red Army*, f. 195, in. 4, f. 385, p. 53.

⁴³ *Papers relating to the foreign relations of the United States, Paris Peace Conference, 1919*, volume IX (Washington, D. C.: U. S. Government Printing Office, 1946), pp. 899 and 901.

⁴⁴ *Ibid.*, p. 904.

57. On 1 December 1920, N. Narimanov, Chairman of the People's Commissioners' Soviet of the Soviet Socialist Republic of Azerbaijan, guided by the decision of the Central Committee of the Communist Party of Azerbaijan of 30 November 1920, made a declaration on the occasion of the proclamation of Soviet rule in Armenia. In this declaration, the western part of Zangazur uyezd was conceded to Armenia and "the working peasants of Nagorny Karabakh are given the full right to self-determination".⁴⁵ As is seen, contrary to the understanding of the Armenian side, the declaration made no reference at all to the "recognition of Nagorny Karabakh as an integral part of Soviet Armenia".

58. On 2 December 1920, the agreement was signed between Russia and Armenia, according to Article 3 of which Russia recognized the following territories to be an undisputed part of the Soviet Socialist Republic of Armenia: "Erivan province [...] part of Kars province [...] Zangazur province [...] and part of Gazakh uyezd [...] and those parts of Tiflis province, which were in the possession of Armenia until 23 October 1920".⁴⁶ This document testifies that until 2 December 1920 not only Nagorny Karabakh, but also the whole Karabakh, except half of the Zangazur uyezd, were not part of Armenia. It also proves that the declaration by N. Narimanov of 1 December 1920 did not mean concession of Nagorny Karabakh to Armenia.

59. Moreover, the Armenian side distorts the text of a decree by Soviet Armenia dated 21 June 1921, presenting it as "a Decree recognizing Nagorny Karabakh as an integral part of Soviet Armenia".⁴⁷ In reality, according to this document, "on the basis of a declaration by the Revolutionary Committee of the Azerbaijan SSR [dated 1 December 1920] and agreement between the governments of the Soviet Republics of Armenia and Azerbaijan, the Revolutionary Committee of Soviet Armenia declares that from this day on Nagorny Karabakh is an inseparable part of the Soviet Republic of Armenia".⁴⁸ In other words, the decree confirms that until June 1921 Nagorny Karabakh could not have been a part of Armenia.

60. As far as the purported "agreement between the governments of Soviet Republics of Armenia and Azerbaijan" is concerned, it is important to notice that on 19 June 1921 the Presidium of the Central Executive Committee of Azerbaijan held its meeting and discussed, inter alia, "the report of Comrade Narimanov about his visit to Tiflis on the issue of external borders between the Soviet Republics of Azerbaijan, Georgia and Armenia". This report states in the most unambiguous manner that "Nagorny Karabakh remains an inseparable part of Soviet Azerbaijan with the right of internal self-rule". Following the discussion, the meeting decided "to approve the activities of the Commission on the establishment of external borders between the Azerbaijan SSR and the neighbouring Soviet Republics of Transcaucasia".⁴⁹

⁴⁵ *Communist* (Baku), 2 December 1920, p. 1.

⁴⁶ *International policy of the newest time in treaties, notes and declarations*, Part 3 (from raising blockade from Soviet Russia to the decade of the October Revolution). Issue 1 (Acts of Soviet diplomacy) (Moscow: Publication of Litizdat of the People Commissariat of Foreign Affairs, 1928), doc. 41, p. 75; *Great October Socialist Revolution and victory of the Soviet rule in Armenia* (Collection of documents) (Yerevan: Aypetrat, 1957), doc. 295, pp. 441-442.

⁴⁷ A/63/781-S/2009/156, p. 8, para. 28.

⁴⁸ *Khorurdain Ayastan*, 19 June 1921, p. 1.

⁴⁹ *State Archive of the Republic of Azerbaijan*, f. 379, inv. 1, f. 7480, p. 10.

61. The Armenian position is discredited also by a number of additional inconsistencies. Thus, the natural question arises as to why Soviet Armenia recognized Nagorny Karabakh as its integral part only in June 1921 if Soviet Azerbaijan had allegedly given its consent to that as early as 1 December 1920.

62. Furthermore, another Armenian official source (information entitled "Legal aspects for the right to self-determination in the case of Nagorny Karabakh" circulated at the request of the Permanent Mission of Armenia to the United Nations Office at Geneva) addresses the chronology of events at that time differently and thereby redoubles the curiousness of the position of Armenia. Thus, the document provides that "[a]ccording to this declaration [of 30 November], the borders previously accepted between Armenia and Azerbaijan were abrogated and Nagorny Karabakh, Zangezur and Nakhichevan were recognized as an integral part of Soviet Armenia". The document further states that "the Azerbaijani Revcom in its 'Declaration Regarding the Establishment of Soviet Power in Armenia' of December 2, 1920, recognized ... Nagorny Karabakh's right for self-determination", and "[o]n June 12, 1921, the National Council of the Azerbaijan SSR ... adopted a declaration, which proclaimed Nagorny Karabakh as an integral part of Armenian SSR". According to the document, "[o]n June 19, 1921, Alexander Miasnikyan, Chairman of the Council of People's Commissars of Armenia, issued the following decree: 'On the basis of the declaration of the Revolutionary Committee of the Soviet Socialist Republic of Azerbaijan, and the agreement between Socialist Republics of Armenia and Azerbaijan, it is declared, that from now on Nagorny Karabakh is an inseparable part of Soviet Socialist Armenia'".⁵⁰

63. The impression from this chronological overview is that Azerbaijan was surprisingly persistent in its purported desire to get rid of its territories and attempts to persuade Armenia to accept this gift. The absurdity of such proposition logically derives from the aforementioned information provided by the Armenian side, according to which Azerbaijan allegedly declared no less than three times, i.e. on 30 November 1920, 2 December 1920 and 12 June 1921, that it recognized Nagorny Karabakh as an integral part of Armenia, while Armenia agreed with that only in June 1921. It is notable, by the way, that the two aforementioned documents circulated by Armenia in the United Nations contradict one another as to the date of this purported consent (19 June 1920 in document E/CN.4/2005/G/23 and 21 June 1920 in document A/63/781-S/2009/156).

64. Furthermore, in the view of the Armenian side, "[f]ollowing the collapse of the [Russian] Empire, Nagorny Karabakh (with 95 per cent of Armenian population) refused to subject itself to the authority of the Democratic Republic of Azerbaijan",⁵¹ "[f]rom 1918 to 1920 ... possessed all necessary attributes of statehood, including army and legitimate authorities" and was "an independent legal entity"⁵² or "independent political unit",⁵³ while "[o]n 23 April 1920 the Ninth Assembly of the Karabakh Armenians declared Nagorny Karabakh as an inalienable part of the Republic of Armenia".⁵⁴ At the same time, according to the Armenian side, following the declaration allegedly made by Azerbaijan on 30 November 1920,

⁵⁰ E/CN.4/2005/G/23, pp. 3-4.

⁵¹ A/63/781-S/2009/156, p. 7, para. 21.

⁵² Ibid., p. 7, para. 23.

⁵³ E/CN.4/2005/G/23, p. 2.

⁵⁴ A/63/781-S/2009/156, p. 7, para. 24.

"the borders previously accepted between Armenia and Azerbaijan were abrogated and Nagorny Karabakh, Zangezur and Nakhichevan were recognized as an integral part of Soviet Armenia".⁵⁵ In other words, as per contradicting arguments of the Armenian side, on the one hand, Nagorny Karabakh is considered to be "an independent legal entity" or "an independent political unit" from 1918 to 1920 and likely as part of Armenia since 23 April 1920, while, on the other, there were "borders previously accepted between Armenia and Azerbaijan" and Nagorny Karabakh, Zangazur and Nakhchyvan formed an integral part of Azerbaijan.

65. It is natural enough that, while falsifying facts, Armenia reaches a deadlock. Otherwise, it would present credible arguments, especially as far as the alleged declarations of Azerbaijan are concerned. The Armenian side at the same time states that "[n]eglecting the reality, on 5 July the Caucasian Bureau of the Communist Party, acting under Joseph Stalin's personal pressure, revised its own decision of the previous day and resolved to subject Karabakh to Azerbaijani rule and to create an autonomous province (oblast) of Nagorny Karabakh, within the territory of Soviet Azerbaijan".⁵⁶ The Armenian side also acknowledges that "[i]n July 1921, the Azerbaijan SSR insisted that Nagorny Karabakh's issue be considered at the Plenary Session of the Caucasian Bureau of the Central Committee of the Russian Communist Party-Bolsheviks (RCP-B)".⁵⁷ The question arises as to why it was necessary to consider the issue of Nagorny Karabakh on 4 July 1921, revise the decision of the previous day on 5 July 1921 and "subject Karabakh to Azerbaijani rule" if Nagorny Karabakh, as the Armenian side insists, was already a part of Armenia. The Armenian side passes over in silence how it could happen against the background of the purported three declarations of Azerbaijan, especially less than a month after the latest one of 12 June 1921.

66. In reality, the Azerbaijani leadership at that time was consistent in retaining Nagorny Karabakh within Azerbaijan. All its declarations do not leave any doubt that there could be no agreement between the Soviet Socialist Republics of Azerbaijan and Armenia on the inclusion of Nagorny Karabakh in Armenia. On the other hand, the purpose of those declarations on Nagorny Karabakh published in Armenia was the pacification of Dashnak rebellions, with the liquidation of which in Zangazur, on 15 July 1921, the "Soviet" rule was again established in Armenia.

67. It was with the same purpose of more effective pacification of Dashnaks that the Bolsheviks chose the method of indulging Armenian nationalists and the Nagorny Karabakh issue was raised in the Caucasian Bureau of the Central Committee of the Russian Communist (*Bolsheviks*) Party on 4 July 1921 and 4 items were put forward for discussion:

- (a) To retain Karabakh as part of Azerbaijan;
- (b) To hold a referendum with the participation of all the Armenian and Muslim population in the whole of Karabakh;
- (c) To include the mountainous part of Karabakh in Armenia;
- (d) To hold a referendum only in Nagorny Karabakh, i.e. among the Armenians.

⁵⁵ E/CN.4/2005/G/23, p. 3.

⁵⁶ A/63/781-S/2009/156, p. 8, para. 30.

⁵⁷ E/CN.4/2005/G/23, p. 4.

68. The Caucasian Bureau decided that "Nagorny Karabakh shall be included in the Soviet Socialist Republic of Armenia" and "the referendum shall be held only in Nagorny Karabakh, i.e. among the Armenians". However, according to the same decision, "[s]ince the Karabakh issue gave rise to serious controversies the Caucasian Bureau of the CCRCP deems it necessary to submit it for the final decision of the CCRCP".⁵⁸

69. The next day, on 5 July 1921, the Caucasian Bureau discussed "the reconsideration of the decision taken on Karabakh at the previous plenary" and decided to retain Nagorny Karabakh within the Azerbaijan SSR. The following quotation proves that the Bureau decided to leave Nagorny Karabakh within the Azerbaijan SSR, not to "transfer" or "subject" it to Azerbaijani rule, as the Armenian side claims:⁵⁹

"Taking into account the necessity of national peace between the Muslims and the Armenians, the economic relations between upper and lower Karabakh and the permanent relations of upper Karabakh with Azerbaijan, Nagorny Karabakh shall be retained within the Azerbaijan SSR and broad autonomy shall be given to Nagorny Karabakh with Shusha city as an administrative centre".⁶⁰

70. In this regard, attention should be drawn to the contradictory position of the Government of Armenia as to the status of the Caucasian Bureau. Thus, according to the document circulated by the request of the Permanent Representative of Armenia to the United Nations on 24 March 2009, "the decision [taken by the Caucasian Bureau] cannot serve as a legal basis for the determination of the status and the borders of the Nagorny Karabakh" insofar as it was adopted by a third-country party, i.e. the Russian Bolshevik Party, with no legal power or jurisdiction".⁶¹ Along with the same understanding, in the initial report of Armenia under the International Covenant on Economic, Social and Cultural Rights the Caucasian Bureau is referred to as "an unconstitutional and unauthorized party organ", which "had no right to participate on the national State-building activities of another State", while its decision of 5 July is considered as "an act of gross intervention in the internal affairs of another sovereign Soviet Republic".⁶² On the contrary, as per the document circulated at the request of the Permanent Mission of Armenia to the United Nations Office at Geneva on 22 March 2005, the Caucasian Bureau is viewed as a legitimate body with the authorization to decide on territorial issues affecting Armenia and Azerbaijan at that time. Thus, Armenia is confident that "[d]e jure, only the [...] decision [of the Caucasian Bureau] of July 4, 1921 [to] 'include Nagorny Karabakh in the Armenian SSR, and to conduct plebiscite in

⁵⁸ Extract from the Protocol of the plenary session of the Caucasian Bureau of the Central Committee of the Russian Communist (Bolsheviks) Party of 4 July 1921. For text, see *To the History of Formation of the Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925: Documents and Materials*, pp. 90-91.

⁵⁹ A/63/781-S/2009/156, pp. 8-9, paras. 30 and 34.

⁶⁰ Extract from the Protocol of the plenary session of the Caucasian Bureau of the Central Committee of the Russian Communist (Bolsheviks) Party of 5 July 1921. For text, see *To the History of Formation of the Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925: Documents and Materials*, p. 92.

⁶¹ A/63/781-S/2009/156, p. 8, para. 30.

⁶² E/1990/5/Add.36, p. 3, para. 2.

Nagorny Karabakh only' was the last legal document on the status of Nagorny Karabakh to be legally adopted without procedural violations".⁶³

71. In reality, the decision of 5 July 1921 was the final and binding ruling which would be repeatedly affirmed by the Soviet leadership and recognized by Armenia over the years. Despite the fact that Nagorny Karabakh was retained within Azerbaijan, it was given the status of autonomy, though the more than half-a-million strong Azerbaijani community compactly residing in Armenia at that time was refused the same privilege.

72. On 7 July 1923, the Central Executive Committee of the Azerbaijan SSR issued a Decree "On the Formation of the Nagorny Karabakh Autonomous Oblast".⁶⁴ The town of Khankandi was defined as the administrative centre of the autonomy. In September 1923, the name of the town was changed to Stepanakert after Stepan Shaumian, a dashnak and a "bolshevik" leader.

73. The administrative borders of the NKAO were defined in a way to ensure that the Armenian population constituted a majority. According to the population census of 12 January 1989, the population of the autonomous oblast was around 189,000 persons; of them: around 139,000 Armenians — 73.5 percent, around 48,000 Azerbaijanis — 25.3 per cent, and around 2,000 representatives of other nationalities — 1.2 per cent.⁶⁵

74. The allegations of discrimination against the Armenian population of Nagorny Karabakh⁶⁶ do not stand up to scrutiny. In reality, the NKAO possessed all essential elements of self-government.

75. The status of Nagorny Karabakh as an autonomous oblast within the Azerbaijan SSR was stipulated in the USSR Constitutions of 1936 and 1977.⁶⁷ In accordance with the Constitutions of the USSR and the Azerbaijan SSR, the legal status of the NKAO was governed by the Law "On the Nagorny Karabakh Autonomous Oblast", which was adopted by the Supreme Soviet of the Azerbaijan SSR on 16 June 1981.⁶⁸ Under the Constitution of the USSR, the NKAO was represented by five deputies in the Council of Nationalities of the Supreme Soviet of the USSR. It was represented by 12 deputies in the Supreme Soviet of the Azerbaijan SSR.

76. The Soviet of People's Deputies of the NKAO — the government authority in the oblast — had a wide range of powers. It decided all local issues based on the interests of citizens living in the oblast and with reference to its national and other specific features. Armenian was used in the work of all government, administrative and judicial bodies and the Prosecutor's Office, as well as in education, reflecting the language requirements of the Armenian population of the oblast. Local TV and

⁶³ E/CN.4/2005/G/23, p. 4.

⁶⁴ For text, see *To the History of Formation of the Nagorny Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925: Documents and Materials*, pp. 152-153.

⁶⁵ *National composition of the population of the USSR. According to the findings of the All-Union population census of 1989* (Moscow: Finance and Statistics, 1991), p. 120.

⁶⁶ A/63/781-S/2009/156, p. 9, paras. 32-33.

⁶⁷ USSR Constitution (Moscow, 1936), p. 14, article 24; USSR Constitution (Moscow, 1977), pp. 13-14, article 87.

⁶⁸ Law of the Azerbaijan SSR "On the Nagorny Karabakh Autonomous Oblast", 16 June 1981 (Baku: Azerneshr, 1987), p. 3, article 3.

radio broadcasts and the publication of newspapers and magazines in the Armenian language were all guaranteed in the NKAO.

77. As a national territorial unit, the NKAO enjoyed administrative autonomy, and, accordingly, had a number of rights, which, in practice, ensured that its population's specific needs were met. In fact, statistics illustrate that the NKAO was developing more rapidly than Azerbaijan as a whole. The existence and development of the NKAO within Azerbaijan confirms that the form of autonomy that had evolved fully reflected the specific economic, social, cultural and national characteristics of the population and the way of life in the autonomous oblast.

78. Against this background, Armenia should not overlook the fact that, unlike itself, which has purged its territory of all non-Armenians and become a uniquely mono-ethnic state, Azerbaijan has preserved its ethnic diversity to the present day. Instead of accusing Azerbaijan of "discrimination towards Nagorny Karabakh", it is for the Government of Armenia to exercise some degree of self-evaluation in the field of human rights. Thus, the relevant United Nations bodies have repeatedly expressed their concerns about the spirit of intolerance prevailing in Armenia and the discriminatory policies and practices pursued in that country against ethnic and religious minorities, refugees and asylum-seekers, women and children.⁶⁹

79. In this regard, it would be appropriate to refer to the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (June 2008), which make it clear that "[s]hould States demonstrate greater interest in minorities abroad than at home or actively support a particular minority in one country while neglecting it elsewhere, the motives and credibility of their actions may be put into question".

80. Thus, the illustrative evidence of racial prejudices prevailing in the policy and practice of Armenia is the unconcealed conviction in "ethnic incompatibility" between Armenians and Azerbaijanis. This word combination has been first used in a speech at the Diplomatic Academy in Moscow in 2003 by the then President Robert Kocharian of Armenia.⁷⁰ The discriminatory conduct of Armenia towards Azerbaijanis, especially the aforementioned statement of President Kocharian, has produced indignation within the international community. Thus, the then Secretary-General of the Council of Europe Walter Schwimmer said "Kocharian's comment was tantamount to warmongering" and manifestation of "bellicose and hate rhetoric", while the then President of the Parliamentary Assembly of the Council of Europe Peter Schieder stated that "since its creation the Council of Europe has never heard the phrase 'ethnic incompatibility'".⁷¹

V. The rising of the contemporary phase of the conflict

81. While presenting its own interpretation of the chronology of events at that time, the Armenian side usually passes over in silence a number of important factual

⁶⁹ See, e.g., A/57/18, paras. 277, 278, 280, 282 and 283; CRC/C/15/Add.119, paras. 24, 32, 46 and 48; CCPR/C/79/Add.100, paras. 14, 15, 16 and 17; and E/C.12/1/Add.39, para. 10.

⁷⁰ Press article by Artur Terian published on 16 January 2003, <http://www.armenialiberty.org/armeniareport/report/en/2003/01/4B1EBB47-69C0-40AF-83DB-24E810DA88E4.asp> See RFE/RL.

⁷¹ Council of Europe criticizes Armenian President, RFE/RL Newline, 17 January 2003, <http://www.rferl.org/content/article/1142847.html>.

aspects pertaining to the real situation on the ground. Another illustration of such "forgetfulness" is the memorandum entitled "Nagorny Karabakh: peaceful negotiations and Azerbaijan's militaristic policy" circulated by the request of the Permanent Representative of Armenia to the United Nations as document A/63/781-S/2009/156.

82. Thus, the present-day stage of the Armenian-Azerbaijani conflict began at the end of 1987⁷² with the attacks on the Azerbaijanis in Khankandi (during the Soviet period — Stepanakert) and Armenia resulting in a flood of Azerbaijani refugees and internally displaced persons.

83. On 20 February 1988, the representatives of the Armenian community at the session of the Soviet of People's Deputies of the NKAO adopted a resolution seeking the transfer of the NKAO from the Azerbaijan SSR to the Armenian SSR.⁷³

84. On 22 February 1988, near the settlement of Asgaran on the Khankandi-Aghdam highway, the Armenians opened fire on a peaceful demonstration by the Azerbaijanis protesting against the above-mentioned decision of the Soviet of People's Deputies of the NKAO. Two Azerbaijani youths lost their lives in consequence, becoming the first victims of the conflict.

85. On 26-28 February 1988, 26 Armenians and Azerbaijanis were killed as a result of the disturbances in Sumgait. It is notable that one of the leading figures in these events was a certain Edward Grigorian, an Armenian and native of Sumgait, who was directly involved in the killings and violence against the Armenians and the pogroms in the Armenian neighbourhoods. By decision of the Criminal Division of the Supreme Court of the Azerbaijan SSR dated 22 December 1989, Grigorian was sentenced to 12 years' imprisonment. The Court found Grigorian to be one of the organizers of unrest and massacres. Depositions by witnesses and victims show that he had a list of flats inhabited by the Armenians and, together with three other Armenians, called for reprisals against the Armenians, in which he took part personally. His victims (all Armenians) identified Grigorian as one of the organizers and active figures in the violence. In fact, events in Sumgait, being necessary to the Armenian leadership as a means of launching an extensive anti-Azerbaijani campaign and justifying the ensuing aggressive actions against Azerbaijan, had been planned and prepared in advance. The events in Sumgait also could hardly be managed without outside powerful support. As *The Times* wrote, the KGB leadership tried "to weaken the Kremlin's authority and powerbase" and "organised acts of provocation, using genuine local dissatisfaction as a base, in cities across the Soviet Union, including Sumgait and Baku ...".⁷⁴

86. Following the aforementioned petition of 20 February 1988, a number of other declarations and decisions were taken by both the Armenian SSR and the local

⁷² According to Thomas de Waal, as early as in February 1986 one activist of the separatist movement, Muradian, travelled to Moscow from Yerevan "with a draft letter that he persuaded nine respected Soviet Armenian Communist Party members and scientists to sign" with the purpose of separation of Nagorny Karabakh from Azerbaijan and its annexation to Armenia, *Black Garden: Armenia and Azerbaijan through Peace and War* (New York University Press, New York and London, 2003), pp. 17-20.

⁷³ A/63/781-S/2009/156, pp. 9-10, para. 36.

⁷⁴ Vladimir Kryuchkov, *Hardline Soviet Communist who became head of the KGB and led a failed plot to overthrow Mikhail Gorbachev*, *Times Online*, 30 November 2007, <http://www.timesonline.co.uk/tol/comment/obituaries/article2970324.ece>.

Armenians of the NKAO with the view of securing the unilateral secession of Nagorny Karabakh from Azerbaijan.⁷⁵

87. Armenia's view is that "following the collapse of the USSR, on the territory of the former Azerbaijani SSR two States were formed: the Republic of Azerbaijan and the Republic of Nagorny Karabakh" (hereinafter — "NKR") and that "[t]he establishment of both States has similar legal basis", while the process by which the latter entity became "independent" reflected the right of self-determination.⁷⁶

88. However, this approach is fundamentally flawed. On the eve of the independence of Azerbaijan, the unlawfulness within the Soviet legal system of attempted unilateral secession of Nagorny Karabakh without Azerbaijan's consent was confirmed at the highest constitutional level. Azerbaijan did not so consent, so that the definition of the territory of Azerbaijan as it proceeded to independence and in the light of the applicable law clearly included the territory of Nagorny Karabakh. Azerbaijan was entitled to come to independence within the territorial boundaries that it was recognized as having as the Azerbaijan SSR within the USSR.

89. The assertion of secession from an independent Azerbaijan on the grounds of self-determination contradicts the universally accepted norm of territorial integrity, as discussed in the report "On the Fundamental Norm of the Territorial Integrity of States and the Right to Self-Determination in the light of Armenia's Revisionist Claims" circulated by the request of Azerbaijan as a document of the General Assembly and the Security Council.⁷⁷

90. Not only has Azerbaijan not consented to this secession (indeed it has constantly and continuously protested against it), but no state in the international community has recognized the "NKR" as independent, not even Armenia, even though Armenia provides indispensable economic, political and military sustenance without which that entity could not exist.

91. It follows from the aforementioned that Armenia's claims as to the "independence" of Nagorny Karabakh are contrary to and unsustainable in international law.

VI. Escalation of the conflict, its course and consequences

92. At the end of 1991 and the beginning of 1992 the conflict turned into a military phase. Taking advantage of the political instability as a result of the dissolution of the Soviet Union and internal squabbles in Azerbaijan, Armenia initiated with external military assistance combat operations in Nagorny Karabakh.

93. The first armed attack by the Republic of Armenia against the Republic of Azerbaijan after the independence of the two Republics — an attack in which organized military formations and armoured vehicles operated against Azerbaijani targets — occurred in February 1992, when the town of Khojaly in the Republic of Azerbaijan was notoriously overrun and its population was subjected to an unprecedented massacre. This bloody tragedy, which became known as the Khojaly genocide, involved the extermination or capture of thousands of Azerbaijanis; the

⁷⁵ For more information, see A/63/664-S/2008/823, p. 45, para. 152.

⁷⁶ A/63/781-S/2009/156, p. 11, para. 43.

⁷⁷ A/63/664-S/2008/823.

town was razed to the ground. Over the night from 25 to 26 February 1992 the Armenian armed forces with the help of the infantry guards regiment No. 366 of the former USSR, the personnel of which was composed mainly of Armenians, implemented the seizure of Khojaly. The inhabitants of Khojaly that remained in the town before the tragic night tried to leave their houses after the beginning of the assault in the hope to find the way to the nearest place populated by the Azerbaijanis. But these plans have failed. Invaders destroyed Khojaly and with particular brutality implemented carnage over its peaceful population. As a result, 613 civilians were killed, including 106 women, 63 children and 70 elderly. Another 1,000 people were wounded and 1,275 taken hostage. To this day, 150 people from Khojaly remain missing.

94. As news and accounts of the atrocity surfaced, the level of brutality was revealed: atrocities by Armenian troops included scalping, beheading, bayoneting of pregnant women, and mutilation of bodies. Even children were not spared. The facts confirm that the intentional slaughter of the Khojaly town civilians on 25-26 February 1992 was directed to their mass extermination only because they were Azerbaijanis. The Khojaly town was chosen as a stage for further occupation and ethnic cleansing of Azerbaijani territories, striking terror into the hearts of people and creating panic and fear before the horrifying massacre.

95. In May 1992, Shusha, the Azerbaijani-populated administrative centre of the district within Nagorny Karabakh, and Lachyn, the district situated between Armenia and Nagorny Karabakh, were occupied. In 1993, the armed forces of Armenia captured another six districts of Azerbaijan around Nagorny Karabakh: Kalbajar (April 1993), Aghdam (July 1993), Jabrayil (August 1993), Gubadly (August 1993), Fuzuli (August 1993) and Zangilan (October 1993).

96. After the open assertion by Armenia in the late 1980s of its territorial claims on Azerbaijan and the launching of armed operations in the Nagorny Karabakh region of the Republic of Azerbaijan such well-known terrorist organizations as the Armenian Secret Army for the Liberation of Armenia (ASALA), the Commandos of Justice of the Armenian Genocide, and the Armenian Revolutionary Army, transferred the centre of their activities from the countries of the Middle East, Western Europe and North America to the territory of the former USSR.

97. In all, as a result of terrorist acts against Azerbaijan carried out since the late 1980s by the Armenian secret service and some Armenian organizations closely connected with it, including criminal acts against road, rail, sea and air transport and ground communications, over 2,000 citizens of Azerbaijan have been killed, the majority of them women, the elderly and children.⁷⁸

⁷⁸ For more information, see the *Information provided by the Ministry of Foreign Affairs of Azerbaijan on the organization and implementation by Armenia of terrorist activities against Azerbaijan*, annex to the letter dated 13 November 1995 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, A/C.6/50/4, 15 November 1995; *Information provided by the Ministry of Foreign Affairs of Azerbaijan on measures to eliminate international terrorism*, annex to the note verbale dated 8 November 1996 from the Permanent Mission of Azerbaijan to the United Nations addressed to the Secretary-General, A/C.6/51/5, 8 November 1996.

98. Furthermore, there are unquestionable facts testifying about the active use by Armenia of mercenaries to attack Azerbaijan.⁷⁹

99. In sum, the ongoing armed conflict in and around the Nagorny Karabakh region of the Republic of Azerbaijan has resulted in the occupation of almost one fifth of the territory of Azerbaijan and made approximately one out of every eight persons in the country an internally displaced person or refugee, 20,000 people were killed, 50,000 people were wounded or became invalids, about 5,000 citizens of Azerbaijan are still missing. It should be particularly emphasized that the Azerbaijani refugees and internally displaced persons were forced to flee because Armenia and its military forces had the clear aim of ethnic cleansing and of creating a mono-ethnic culture there.

100. On 12 May 1994, the ceasefire was established. However, Armenia continues to violate the truce. Since summer of 2003 there has been an acute increase in the Armenian side's violations of the ceasefire. In addition to shelling and killing Azerbaijani soldiers along the ceasefire line, Armenians also attack civilians residing in the adjacent territories.

101. The aggression against the Republic of Azerbaijan has severely damaged the socio-economic sphere of the country. In the occupied territories 6 cities, 12 town-type villages, 830 settlements, and hundreds of hospitals and medical facilities were burned or otherwise destroyed. As a result of aggression, hundreds of thousands of houses and apartments and thousands of community and medical buildings were destroyed or looted. Hundreds of libraries have been plundered and millions of books and valuable manuscripts have been burned or otherwise destroyed. Several state theatres, hundreds of clubs and dozens of musical schools have been destroyed. Several thousands of manufacturing, agricultural and other kinds of factories and plants have been pillaged. The hundred kilometres-long irrigation system has been totally destroyed. Flocks of several hundreds of thousands of sheep and dozens of thousands of cattle have been driven out of the occupied territories to Armenia. About 70 per cent of the summer pastures of Azerbaijan remains in the occupied zone.

102. The regional infrastructure including hundreds of bridges, hundreds of kilometres of roads and thousands of kilometres of water pipelines, as well as thousands of kilometres of gas pipelines and dozens of gas distribution stations have been destroyed.

103. The war against Azerbaijan has also had catastrophic consequences for its cultural heritage both in the occupied territories and in Armenia.⁸⁰

104. Contrary to the numerous statements of the official Yerevan that Armenia is not directly involved in the conflict with Azerbaijan and occupation of its territories and that "Nagorny Karabakh gained its independence according to the domestic and international legal norms" (document A/63/781-S/2009/156 is yet another example of such misinterpretation), there are ample evidences testifying against such allegations and proving the direct military aggression of the Republic of Armenia

⁷⁹ For more information, see the note by the Secretary-General entitled "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination", A/49/362, pp. 24-29, paras. 69-72.

⁸⁰ For more information, see the report entitled *The War against Azerbaijani Cultural Heritage*, A/62/691-S/2008/95, 13 February 2008.

against a sovereign state.⁸¹ At the same time, "NKR" in its current manifestation is an ethnically constructed illegal entity and its organs must also be so tainted. The area of Nagorny Karabakh and the surrounding occupied territories remain under the effective control of Armenia.

105. In reality, the actions of Armenia, up to and including the resort to force, constitute a violation of the fundamental norm of respect for the territorial integrity of states, as well as a violation of other relevant international legal principles, such as the rule prohibiting the use of force.

VII. The current situation in the occupied territories of Azerbaijan

106. It has been internationally recognized that Azerbaijani territories are under occupation and that Armenia has been actively involved in the creation and maintenance of that situation. The existence of and exclusive Armenian presence in the occupied territories is expressly recognized by the political organs of the United Nations, by the European Union, OSCE, the Council of Europe and the Organization of the Islamic Conference, together with recognition by individual states. Accordingly, Armenia is an occupying power within the meaning of the relevant international legal provisions.

107. The critical period for the determination of the status of Armenia as an occupying power of Azerbaijani territory is the end of 1991 for this was the period during which the USSR disintegrated and the new successor States came into being, thus transforming an internal conflict between the two Union Republics into an international conflict.

108. Taking advantage of the favourable results of military actions, Armenia is trying to consolidate the current status quo and impose finally a fait accompli situation through measures aimed at preventing the expelled Azerbaijani population from returning to their places of origin. Such measures include, inter alia, continuing illegal settlement practices and economic activities in the occupied territories accompanied by serious and systematic interference with property rights.

109. Sources, including Armenian ones, report on tens of thousands of settlers, who have moved into the occupied territories of Azerbaijan, including districts adjacent to the Nagorny Karabakh region, such as Lachyn, Kalbajar, Zangilan and Jabrayil. Facts testify that this is being done in an organized manner with the purpose of annexation of these territories. In 2000, "the resettlement programme" has been adopted with the declared purpose to increase the number of the population in the Nagorny Karabakh region to 300,000 by the year 2010.

⁸¹ See, e.g., the report entitled *Military occupation of the territory of Azerbaijan: a legal appraisal*, annex to the letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, A/62/491-S/2007/615, 23 October 2007, pp. 5-8; A/63/662-S/2008/812, pp. 7-8, paras. 16-19; A/62/692-S/2007/51, pp. 6-10, paras. 17-33; *Report of the Secretary-General pursuant to the statement of the President of the Security Council in connection with the situation relating to Nagorny-Karabakh*, para. 10 (S/25600, 14 April 1993); OSCE Office for Democratic Institutions and Human Rights, *Republic of Armenia Presidential Election Observation*, final report, p. 8 (issued 9 April 1998); Crisis Group, *Nagorno-Karabakh: Viewing the Conflict from the Ground*, p. 9 (Europe report No. 166, 14 September 2005); Letter from the Chargé d'affaires of the Permanent Mission of Azerbaijan to the United Nations Secretary-General (with annexed photocopies), S/1994/147, 14 February 1994.

110. Armenia continues to take purposeful measures to build up its military presence in the occupied territories of Azerbaijan. The arms control mechanism is not effective in the territories of Azerbaijan occupied by Armenia. Accumulation of a great number of armaments and ammunitions in these territories, which are beyond international control, poses serious threats to regional peace and security.

111. Highly alarmed by the far-reaching implications of this activity, Azerbaijan has requested to address the situation in its occupied territories within the General Assembly. This initiative proceeded from the strong belief that the only way for reaching a just, complete and comprehensive settlement of the conflict between Armenia and Azerbaijan is an approach based on the full and unequivocal respect for the letter and spirit of international law.

112. On 29 October 2004, the General Assembly decided to include the item entitled "The situation in the occupied territories of Azerbaijan" on the agenda of its fifty-ninth session. On 11 November 2004, a report on the transfer of population into the occupied territories of Azerbaijan was submitted to the General Assembly.⁸² The General Assembly's consideration of this agenda item played a crucial role in attracting attention to the issue of the illegal transfer of settlers into the occupied territories of Azerbaijan, as well as in initiating urgent measures for putting an end to this dangerous practice.

113. A visit to the occupied territories of the OSCE fact-finding mission from 30 January-5 February 2005 became a logical consequence of Azerbaijan's initiative to raise the issue on the situation in its occupied territories before the General Assembly. The main outcome of the mission's activity was the report based on comprehensive facts, both provided by Azerbaijan and obtained during study of the situation on the ground. The mission clearly confirmed the transfer of settlers into the occupied territories, thus underlining the concerns of Azerbaijan. In their turn, the OSCE Minsk Group Co-Chairmen, proceeding from the conclusions contained in the mission's report, have emphasized the inadmissibility of changes in the demographic composition of the region and urged appropriate international agencies to conduct needs assessment for resettlement of the population located in the occupied territories and return of the internally displaced persons to their places of permanent residence. The report and recommendations of the OSCE Minsk Group Co-Chairmen that were based on it, laid down a basis for further consideration and resolution of the problem.⁸³

114. The issue of the situation in the occupied territories of Azerbaijan has been also included in the agenda of the subsequent sessions of the General Assembly.

115. On 7 September 2006, the General Assembly adopted resolution 60/285 entitled "The situation in the occupied territories of Azerbaijan" as proposed by Azerbaijan in regard to the incidents of massive fires taking place in the occupied territories.⁸⁴

⁸² Information on the transfer of population into the occupied territories of Azerbaijan, annex to the letter dated 11 November 2004 from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the General Assembly, A/59/568, 11 November 2004.

⁸³ Letter dated 18 March 2005 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, Annex II: *Report of the OSCE fact-finding mission to the occupied territories of Azerbaijan surrounding Nagorny Karabakh*, A/59/747-S/2005/187, 21 March 2005.

⁸⁴ Letter dated 28 July 2006 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, transmitting a letter dated 28 July 2006 from the Minister for Foreign Affairs of the Republic of Azerbaijan regarding the wide-scale fires in the occupied territories of Azerbaijan, A/60/963.

116. The resolution stresses the necessity of the urgent conduct of an environmental operation, and calls for assessment of the short-term and long-term impact of the fires on the environment of the region and its rehabilitation. For these purposes, the resolution emphasizes the readiness of the parties to cooperate and calls upon the organizations and programmes of the United Nations system, in particular the United Nations Environment Programme to cooperate with OSCE.

117. The OSCE fact-finding mission, carried out from 2 to 13 October 2006, assessed the short-term and long-term impact of the fires on the environment in the affected territories and confirmed, inter alia, that "the fires resulted in environmental and economic damages and threatened human health and security".⁸⁵

118. On 14 March 2008, the General Assembly adopted at its sixty-second session resolution 62/243 on the situation in the occupied territories of Azerbaijan. Seriously concerned that the armed conflict in and around the Nagorny Karabakh region of the Republic of Azerbaijan continued to endanger international peace and security, the General Assembly reaffirmed its continued strong support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders, demanding the immediate, complete and unconditional withdrawal of all Armenian forces from all occupied territories of the Republic of Azerbaijan. The Assembly reaffirmed the inalienable right of the population expelled from the occupied territories to return to their homes. It has also recognized the necessity of providing normal, secure, and equal conditions of life for Armenian and Azerbaijani communities in the Nagorny Karabakh region of the Republic of Azerbaijan, which would allow to build up an effective democratic system of self-governance in this region within the Republic of Azerbaijan. The General Assembly also reaffirmed that no state shall recognize as lawful the situation resulting from the occupation of the territories of the Republic of Azerbaijan, nor render aid or assistance in maintaining this situation.

119. By paragraph 8 of resolution 62/243, the General Assembly requested the Secretary-General to submit to the General Assembly at its sixty-third session a comprehensive report on the implementation of the resolution. This report was issued on 30 March 2009 and reproduced the replies received from Governments of States Members of the United Nations.⁸⁶

VIII. Mediation efforts

120. Since February 1992 the process of mediation on the settlement of the Armenia-Azerbaijan conflict within the Conference on Security and Cooperation in Europe (hereinafter CSCE)⁸⁷ has continued. At the Additional Meeting of the CSCE Council of Ministers, held in Helsinki on 24 March 1992, a decision to convene as soon as possible a conference on Nagorny Karabakh in Minsk under the auspices of CSCE to provide an ongoing forum for negotiations towards a peaceful settlement

⁸⁵ Letter dated 20 December 2006 from the Permanent Representative of Belgium to the United Nations addressed to the Secretary-General, Annex: *OSCE-led environmental assessment mission to the fire-affected territories in and around the Nagorny Karabakh region. Report to the OSCE Chairman-in-Office from the Coordinator of OSCE Economic and Environmental Activities*, A/61/696.

⁸⁶ A/63/804 and Corr.1 and Add.1.

⁸⁷ Since 1 January 1995 the CSCE has been transformed into the Organization for Security and Cooperation in Europe.

of the crisis on the basis of the principles, commitments and provisions of CSCE was adopted.

121. In general, the legal and political constituents for the settlement of the conflict are based on the norms and principles of international law, laid down in Security Council resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993) and General Assembly resolution 62/243, as well as in the appropriate documents and decisions of OSCE and other international organizations. The above-mentioned Security Council resolutions were adopted in 1993 in response to the occupation of the territories of Azerbaijan and reaffirmed respect for the sovereignty, territorial integrity and inviolability of the international borders of the Republic of Azerbaijan and all other states in the region. The resolutions demanded immediate cessation of all hostile acts, and immediate, complete and unconditional withdrawal of occupying forces from all occupied regions of the Republic of Azerbaijan, and called for the restoration of economic, transport and energy links in the region, ensuring the return of refugees and displaced persons to their homes. The Security Council approved also the efforts of the OSCE Minsk Group on the achievement of the peaceful solution to the conflict and called for the search of ways of conflict settlement within the OSCE Minsk process. None of these resolutions was implemented by Armenia.

122. On 12 May 1994, the ceasefire was established. According to the decision taken at the CSCE Budapest Summit (5-6 December 1994), Heads of States and Governments of the CSCE participating states set up the office of the Co-Chairmanship of the Minsk Conference for the coordination of all mediation efforts within the CSCE framework. The Budapest Summit tasked the CSCE Chairman-in-Office to conduct negotiations aimed at the conclusion of the political agreement on the cessation of the armed conflict, implementation of which would remove the consequences of the conflict and would allow convening the Minsk Conference. The Summit also adopted a decision on the deployment of the CSCE multinational peacekeeping forces after the achievement of the agreement between the Parties on the cessation of the armed conflict, and the establishment of the High-Level Planning Group located in Vienna and aimed at the preparation of the peacekeeping operation. It superseded an earlier Initial Operations Planning Group, which was established in May 1993.

123. The OSCE Chairman-in-Office issued on 23 March 1995 the mandate for the Co-Chairmen of the Minsk Process.⁸⁸

124. At the OSCE Lisbon Summit of the Heads of States and Governments of the CSCE participating states, held on 2-3 December 1996, the Co-Chairmen of the OSCE Minsk Group and the OSCE Chairman-in-Office recommended the principles, which should have been the basis for the settlement of the Nagorny Karabakh conflict. Armenia was the only 1 out of 54 OSCE participating states not to support them.

125. Then the OSCE Chairman-in-Office made a statement with the inclusion of those principles. They are as follows:

- territorial integrity of the Republic of Armenia and the Azerbaijan Republic;

⁸⁸ OSCE Doc. 525/95.

- legal status of Nagorno-Karabakh defined in an agreement based on self-determination which confers on Nagorno-Karabakh the highest degree of self-rule within Azerbaijan;
- guaranteed security for Nagorno-Karabakh and its whole population, including mutual obligations to ensure compliance by all the Parties with the provisions of the settlement.

126. After the Lisbon Summit the office of the triple Co-Chairmanship, including Russia, France and the United States of America, was established in 1997 (since 1992 the Chairmen of the Minsk Conference were Italy in 1992-1993, Sweden in 1994, Russia and Finland in 1995-1996). Since April 1997 the negotiations were suspended and substituted by the visits of the Co-Chairmen to the region. On 1 June 1997, the Co-Chairmen presented the draft of a comprehensive agreement on the settlement of the Nagorny Karabakh conflict, which consisted of the Agreement on the cessation of the armed conflict and the Agreement on the status of Nagorny Karabakh. Despite the readiness of Azerbaijan to start constructive consultations on the essence of the mentioned documents, Armenia categorically rejected the proposed approach.

127. On 19-23 September 1997, the Co-Chairmen, during their visit to the region, presented new proposals based on the "stage-by-stage" approach to the settlement, according to which it was planned at the first stage to liberate six occupied districts, to deploy the OSCE peacekeeping operation, to return the displaced persons to the liberated territories and to restore main communications in the conflict zone. At the second stage the issues of Lachyn and Shusha were to be solved and the main principles of the status of Nagorny Karabakh were to be adopted. As a result, the OSCE Minsk Conference ought to be convened. On 10 October 1997, the Presidents of Azerbaijan and Armenia in their joint Statement in Strasbourg pointed out that "the recent proposals of the Co-Chairmen were a hopeful basis for the resumption of negotiations within the framework of the Minsk Group".

128. But after the resignation in February 1998 of President Levon Ter-Petrossian of the Republic of Armenia, and with coming to power in March 1998 of Robert Kocharian, the next visit of the Co-Chairmen to the region took place, when Armenia officially withdrew the consent to the proposals on the "stage-by-stage" settlement of the conflict.

129. On 9 November 1998, the Co-Chairmen put forward the proposals based on the concept of a "common state". According to this concept, Nagorny Karabakh would have the status of a state and a territorial unit in the form of a republic, which, together with Azerbaijan, would constitute the common state within the internationally recognized borders of Azerbaijan. Azerbaijan rejected those proposals insofar as they disregarded its sovereignty and contradicted the Lisbon principles. Since then no new proposals have been made and the Minsk process practically has reached a deadlock.

130. In order to give an additional impetus to the negotiations, since April 1999 direct talks between the Presidents of Azerbaijan and Armenia on the achievement of conflict settlement have taken place.

131. During the visit to the region in March 2002 the OSCE Minsk Group Co-Chairmen proposed to conduct negotiations at the level of special representatives of the Presidents of Azerbaijan and Armenia. The proposal was accepted by the heads of both states. On March 13-15 and July 29-30 2002, the two

meetings of the special representatives of the Presidents of Armenia and Azerbaijan took place near Prague.

132. Since 2004 the direct talks between the Foreign Ministers of Armenia and Azerbaijan have started within the so-called "Prague Process".

133. Nevertheless, despite positive signs in the drive to find a settlement to the conflict, the parties could not achieve a substantial breakthrough. The OSCE Minsk Group Co-Chairmen reported on 22 June 2006 to the OSCE Permanent Council that during the past seven months they intensified mediation efforts and worked hard to achieve the agreement of both sides on basic principles for a settlement. For that purpose they visited Baku and Yerevan three times together and several more times separately, organized two meetings of the Ministers for Foreign Affairs of Armenia and Azerbaijan and two summits between the Presidents of both states — first in Rambouillet in February and then in Bucharest in early June. For the first time since 1997, when the current format of the Co-Chairmanship of the Minsk Group was established, a joint Mission of Representatives of the Co-Chair countries at the Deputy Foreign Minister level travelled to the region in May in order to make clear to the Presidents of both states that 2006 was the necessary window of opportunity for reaching an agreement on Nagorny Karabakh.

134. According to the Co-Chairmen, a set of core principles had been proposed to Presidents Aliyev and Kocharian. They clarified that their approach was not aimed at solving all aspects of the conflict in one phase. Instead, in the words of the Co-Chairmen, their principles sought to achieve a major degree of progress but deferred some very difficult issues to the future and envisioned further negotiations.

135. Nevertheless, the Co-Chairmen stated that since the two Presidents failed to agree they had reached the limits of their creativity in the identification, formulation and finalization of these principles. They made clear that if the two sides were unable to agree on those principles, which had been put forward, it was now contingent upon the parties themselves to work together to reach an alternative agreement that both found acceptable. The Co-Chairmen pointed out that they saw no point in continuing the intensive shuttle diplomacy and in initiating further presidential meetings.

136. In response to the statement of the Minsk Group Co-Chairmen and comments made on that by the Armenian side, which has traditionally attempted to distort the reality of the settlement process, the Ministry of Foreign Affairs of the Republic of Azerbaijan clarified, *inter alia*, that definition of the legal status of the Nagorny Karabakh region of the Republic of Azerbaijan is impossible under the conditions of continuing occupation and ethnic cleansing and, accordingly, envisages liberation of the occupied territories of Azerbaijan, demilitarization of the whole conflict zone, provision of appropriate international security guarantees therein and return of the forcibly displaced population of Azerbaijan to their homes.

137. Azerbaijan once again reaffirmed its readiness to grant Nagorny Karabakh the highest status of self-rule within the internationally recognized territorial integrity of the Republic of Azerbaijan and based on its Constitution.

138. The Ministry also pointed out that with the aim of establishing inter-communal peace and harmony, as well as creating objective conditions for defining the region's status, and also taking into consideration the perspective of the region's further development, Azerbaijan would be prepared to review, in conformity with the

precedents existing in international practice, implementation of a complex of economic and other incentives for the population of Nagorny Karabakh after the restoration of its ethnic composition as of the pre-conflict period.

139. Along with that, Azerbaijan's adherence to continuing talks to achieve lasting and fair peace in the region has been repeatedly reaffirmed.

140. On 13 July 2007, the Co-Chairmen of the OSCE Minsk Group issued a statement in which they provided assessment of the emerging situation in the settlement process for the conflict in light of the meeting between the President of the Republic of Azerbaijan, Ilham Aliyev, and the President of the Republic of Armenia, Robert Kocharian, in St. Petersburg on 9 June 2007. The Co-Chairmen stated that during the meeting the Presidents concentrated their discussion on a limited number of obstacles that stood in the way of agreement on a set of "basic principles" for the peaceful settlement of the conflict. The Co-Chairmen further stated that the Presidents could not overcome these remaining differences. The Co-Chairmen in their statement took note of the initiative to organize a joint visit to the Nagorny Karabakh region, Yerevan and Baku of a group of intellectuals from Azerbaijan and Armenia. The Co-Chairmen welcomed and highly appreciated that event, which they considered as a first concrete confidence-building measure.

141. In its statement following the adoption by the General Assembly on 14 March 2008 of resolution 62/243, the Ministry of Foreign Affairs of the Republic of Azerbaijan made it clear that the draft paper on "basic principles" for the peaceful settlement of the conflict, prepared by the Co-Chairmen of the OSCE Minsk Group, contained more disagreements and unsettled issues rather than clarity.

142. On 2 November 2008, the Presidents of Armenia, Azerbaijan and the Russian Federation signed a Joint Declaration in Moscow. This document states, inter alia, that the signatories "will work towards improving the situation in the South Caucasus and establishing stability and security in the region through a political settlement of the Nagorny Karabakh conflict, on the basis of the principles and norms of international law and the decisions and documents adopted in this framework, which will create favourable conditions for economic development and comprehensive cooperation in the region". Thus, the heads of three states underlined that the principles and norms of international law and the decisions and documents adopted in this framework, which undoubtedly includes in the first place the Security Council resolutions of 1993 as well as the General Assembly resolutions of 2006 and 2008, are the basis of a political settlement of the conflict between Armenia and Azerbaijan.

143. The conflict settlement issue is being routinely addressed at all OSCE Summits and Ministerial Council meetings, which stress generally the importance of the peace dialogue and efforts to achieve an early settlement of the conflict based on the norms and principles of international law.

144. The issue of the consequences of the conflict also remains on the agenda of the Council of Europe. Thus, consideration of the matter in question during the January 2005 session of the Council of Europe Parliamentary Assembly resulted in adoption of resolution 1416 entitled "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference". The Parliamentary Assembly reaffirmed the occupation of a considerable part of the territory of Azerbaijan and expressed its concern that the military action, and the widespread ethnic hostilities which preceded it, led to

large-scale ethnic expulsion and the creation of mono-ethnic areas which resemble the terrible concept of ethnic cleansing. The Assembly made it clear that the occupation of foreign territory by a member state constitutes a grave violation of that state's obligations as a member of the Council of Europe and reaffirmed the right of displaced persons from the area of conflict to return to their homes safely and with dignity. The Assembly also recalled the relevant resolutions of the Security Council and urged the parties concerned to comply with them, in particular by withdrawing military forces from any occupied territories.

IX. Position of Azerbaijan towards the conflict settlement

145. Although the mediation efforts conducted for already quite a long period of time within the framework of OSCE have not always been consistent and have yet to yield results, Azerbaijan continues to be committed to solving the conflict by political means and in a constructive manner.

146. The strategy of the Government of Azerbaijan is aimed at the liberation of all occupied territories, the return of forcibly displaced population to their homes, and the establishment of durable peace and stability in the Nagorny Karabakh region of Azerbaijan, as well as in the entire South Caucasus.

147. The final stage of the settlement process provides for elaboration and definition of the model and legal framework of the status of the Nagorny Karabakh region within Azerbaijan. Having said that, Azerbaijan believes that the process of definition of any status shall take place in normal peaceful conditions with direct, full and equal participation of the entire population of the region, namely, the Armenian and Azerbaijani communities, and in their constructive interaction with the Government of Azerbaijan exclusively in the framework of a lawful and democratic process.

148. A number of important steps have to be taken to reach a stage where the parties concerned can start consideration of the self-rule status for the Nagorny Karabakh region within Azerbaijan.

149. Firstly, the factor of military occupation must be removed from the conflict settlement context. Delay of return of the territories, which is not justified by any substantial reasons, can complicate the already difficult settlement process.

150. Secondly, the demographic situation which existed in the region before the outbreak of the conflict must be restored. It is clear that the status may only be defined through direct participation of both Azerbaijani and Armenian communities, living side-by-side in Nagorny Karabakh.

151. Thirdly, the regime of interaction between the central authorities of Azerbaijan and local authorities of the Armenian community must be established, until the new legal status of self-rule for the Nagorny Karabakh region is elaborated.

152. Another important element is a rehabilitation and economic development of the region. This step is essential for the process of normalization of life and restoration of peaceful coexistence and cooperation between the two communities. It should include restoration and development of economic links between the two communities, as well as between the central authorities of Azerbaijan and the Nagorny Karabakh region, and restoration and opening of communications for

mutual use by both sides in both directions. This will in particular provide a connection for the Armenian population of the Nagorny Karabakh region with Armenia, and for Azerbaijan with its Autonomous Republic of Nakhchivan through the Lachyn road.

153. The fifth element entails cooperation between the two communities in the humanitarian sphere, and implementation of the special programmes on education and tolerance.

154. As for the implementation of the peace agreement to be signed between Armenia and Azerbaijan, it will be guaranteed by the commitments undertaken by the two sides under the Agreement, and by the relevant international guarantees.

155. It is obvious at the same time that the success of the peace process depends on a constructive approach of both sides, as well as on the active contribution of the international community, especially of the OSCE Minsk Group and its Co-Chairmen.

156. However, it is very difficult to hope for a substantial breakthrough judging from a position, on which Armenia persists. Indeed, it is exactly for the purpose of unilateral secession that Armenia wants to retain control over some occupied districts surrounding Nagorny Karabakh, prevents the displaced Azerbaijani population from returning to their homes and thus excludes equal consideration of opinions of both communities. It is obvious that this approach of Armenia cannot serve as a sound basis for the conflict resolution.

157. While being committed to solving the conflict peacefully and in a constructive manner, Azerbaijan, however, will never accept a solution compromising its territorial integrity, ignoring the rights of its people and legalizing the current status quo. To hold otherwise would be tantamount to legitimizing the consequences of ethnic cleansing and other serious breaches of the rule of law and human rights.

158. The conflict can only be solved on the basis of respect for the territorial integrity and inviolability of the internationally recognized borders of Azerbaijan, and peaceful coexistence of Armenian and Azerbaijani communities in the Nagorny Karabakh region, fully and equally enjoying the benefits of democracy and prosperity.

159. The continuation of the "no peace-no war" situation without concrete prospects for the soonest resolution of the conflict is the main source of instability in the whole South Caucasus.



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Agenda item 144

**Financing of the International Tribunal for the Prosecution
of Persons Responsible for Serious Violations of International
Humanitarian Law Committed in the Territory of the Former
Yugoslavia since 1991**

**Budget for the International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of International
Humanitarian Law Committed in the Territory of the
Former Yugoslavia since 1991 for the biennium 2010-2011**

Report of the Secretary-General

Summary

The present report contains the resource requirements for the biennium 2010-2011 of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

The resources for the biennium 2010-2011 before recosting amount to \$301,895,900 gross (\$279,847,400 net) and reflect a net decrease in real terms of \$74,337,000 gross, or 19.8 per cent (\$62,219,600 net or 18.2 per cent), compared to the revised appropriation for 2008-2009.



I. Introduction

1. The terms of reference of the International Tribunal for the Former Yugoslavia were established by the Security Council in its resolution 808 (1993). The statute of the Tribunal, adopted by the Security Council in resolution 827 (1993), provides in article 11 that the Tribunal shall consist of three organs, namely, the Chambers, the Prosecutor and the Registry. The activities for which the Tribunal is responsible are also set out in the statute.

2. The Security Council, in its resolution 1329 (2000), expressed its continuing conviction that the prosecution of persons responsible for serious violations of international humanitarian law in the territory of the former Yugoslavia contributed to the restoration and maintenance of peace in the former Yugoslavia.

3. The report on the judicial status of the Tribunal and the prospects for referring certain cases to national courts (S/2002/678) was endorsed on 23 July 2002 by a statement of the President of the Security Council on behalf of the Council (S/PRST/2002/21). The report presented the completion strategy of the Tribunal, setting 31 December 2004 for the conclusion of all new investigations, 31 December 2008 for the completion of first-instance trials and 31 December 2010 for the completion of appeals. The first major milestone has been met with all investigations having been completed and the last new indictments confirmed by the Chambers at the end of 2004.

4. At the time of writing of the present report, there are only four cases in pretrial proceedings. In all four of these cases, the trials are scheduled to start in 2009. The progress made in pretrial and trial activity has allowed the Tribunal to make a reasonable forecast as to the anticipated completion of all first-instance trials. At present, that assessment indicates that out of eight cases scheduled for the biennium 2010-2011 (involving 15 accused), five trials will be completed during 2010, two during the first quarter of 2011 and the remaining trial will extend to February 2012. The slippages foreseen in estimated completion dates are for the most part attributable to the late arrest of fugitives, whose trials could have been joined with those of other accused (with the same crime base) had they been apprehended earlier. The postponement in the conclusion of trials will have a consequential impact on the expeditious completion of appellate activity. Based on the workload of the Appeals Chamber, it is now anticipated that the completion of all appeals will not be prior to 2013. Updated information on the progress made in achieving the goals of the completion strategy will be provided by the President of the Tribunal and the Prosecutor in their joint biannual reports to the Security Council.

5. A trial schedule reflecting these timelines has been used by the Tribunal in order to determine the resource requirements for the biennium 2010-2011. It should be borne in mind that a number of external factors beyond the Tribunal's control can and will have a major impact on the anticipated completion dates of trials, as reflected in the projected trial schedule. Should the actual trial schedule vary significantly from that used for the formulation of the 2010-2011 budget proposal, the requirements would have to be reassessed and realigned and any additional requirements would be addressed in the context of the performance reports for the biennium 2010-2011. Likewise, it should be noted that the trial schedule and the related budget proposal do not take into account the resource requirements relating to the trials of the two fugitives who remain at large.

6. The completion strategy comprises two main pillars: (a) the fair and expeditious completion of trials at the Tribunal, in accordance with the established timeline; and (b) the transfer of certain cases against persons indicted by the Tribunal to competent national jurisdictions in the former Yugoslavia.

7. During the biennium 2010-2011, five main developments will affect the workload of the Tribunal in support of the first pillar, namely: (a) the continued undertaking of a seventh trial during the first three quarters of 2010; (b) the high complexity of trials and appeals resulting from multiple-accused cases; (c) the completion of seven first-instance trials during the biennium 2010-2011; (d) an increase in the number and complexity of appeals, both interlocutory and appeals on merits; and (e) a reduction in first-instance trial activity as from the third quarter of 2010, following the completion of trials.

8. To further ensure the expeditious completion of first-instance trials, the Tribunal has been running a seventh trial simultaneously since late 2007 and plans to continue this measure during the first three quarters of 2010. The undertaking of a seventh trial has been made possible: (a) as a result of the decision to have the three new reserve judges sit in more than one trial; and (b) by utilizing gaps that may appear in the courtroom schedule owing to illness of the accused or counsel, the failure of witnesses to testify, judgement drafting or other unforeseen circumstances that lead to the adjournment of a proceeding. Free courtroom space will also be used for Chambers wishing to conduct additional hearings to expedite the completion of their cases. The scheduling of the seventh trial, while maximizing the use of courtroom time, will stretch to a maximum the capacity of all organs of the Tribunal.

9. In order to increase the pace of trial activity and improve judicial efficiency, in the past biennium the Chambers granted the Prosecutor's requests to join related indictments and run trials with multiple accused. Three such trials are scheduled to continue during the biennium 2010-2011. While the joining of cases has expedited the pace of trials, multiple-accused cases have the effect of generating far more motions and appeals than cases that involve a single accused, which has a consequential impact on the workload of the Chambers and of the Office of the Prosecutor. Five additional cases involving single-accused indictments are scheduled during the biennium 2010-2011, making a total of eight cases to be tried at first instance during the biennium, involving 15 accused (excluding the two fugitives who remain at large).

10. All cases on trial are expected to be appealed by either one or more parties to the proceedings. During the biennium 2010-2011, the Appeals Chamber is scheduled to complete proceedings in cases involving 21 accused, as compared to 16 in the biennium 2008-2009. A total of 32 accused will be at the appeal stage, of which 16 accused will be in proceedings involving the highest level of complexity. The increase in the number and profile of the accused will have an impact on the volume and complexity of the cases on appeal. The current workload of the Appeals Chamber fully occupies the judges and their staff. The significant increase in the workload expected during the next biennium, in particular with respect to the multi-accused cases, is such that the number of judges and their staff will need to be increased. The President of the International Tribunal for the Former Yugoslavia, following consultation with the President of the International Criminal Tribunal for Rwanda has recommended to the Security Council an increase in the membership of

the Appeals Chamber, from the current statutory level of seven judges (five for the International Tribunal for the Former Yugoslavia and two for the International Criminal Tribunal for Rwanda) to a total of 15 judges (nine for the International Tribunal for the Former Yugoslavia and six for the International Criminal Tribunal for Rwanda). This will be accompanied by a corresponding redeployment of legal staff from trials to appeals in order to adequately support the strengthened Appeals Chamber during the biennium 2010-2011. In addition, with the completion of trials, there will be a reduction in the number of judges during the biennium from 26 judges (14 permanent and 12 ad litem) to 12 judges (10 permanent and 2 ad litem), which will translate into significant savings for the Chambers.

11. The working groups on speeding up trials and appeals were reconstituted in 2008 to assess the effectiveness of measures implemented and to identify fresh ways of enhancing the efficient conduct of trials and appeals. A number of measures aimed at expediting trials have been adopted, including: (a) reduction in the scope of the indictment; (b) assignment of cases to the trial chamber likely to try the case at the earliest stage possible; (c) use of agreed facts and of adjudicated facts; (d) admission of evidence in writing; (e) strict enforcement of time limits upon the parties; and (f) discouragement of duplicative evidence. In terms of appeals, based on a report of the Working Group on Speeding up Appeals, the members of the Appeals Chamber adopted a number of new recommendations, including with regard to the need to adhere strictly to the requirement of good cause to vary time and word limits, and the practice of not delaying the briefing schedule on appeal for translation of the judgement into Bosnian/Serbian/Croatian but permitting an appellant to bring a motion to amend the notice of appeal and/or appeal brief if necessary. All of these important measures will have a significant impact on the expeditious completion of proceedings.

12. In terms of judicial and administrative support, the Tribunal will continue to implement measures aimed at reducing the length of trials and improving efficiency. These include the e-Court system; the implementation of the Internet remote access to the judicial database; the Office of Document Management; and the application of the pretrial and trial lump sum defence payment system. Further, in the light of the expected high number of appellate proceedings during the next biennium, the Registry, in consultation with the Association of Defence Counsel, is finalizing a lump-sum legal-aid policy for appeals. It is envisaged that the policy will be based on a lump-sum payment system similar to those for pretrial and trial. The new appeals legal-aid policy, once implemented, is expected to have the same positive effect as the pretrial and trial policies; that is, a decrease in the administrative burden on the Tribunal's administration and on the defence, cost-efficiency and flexibility, allowing defence counsel to plan their work within available resources.

13. The first priority of the Office of the Prosecutor will be to focus on ongoing trials and appeals. In order to improve efficiency in the support of trials and appeals, the Office of the Prosecutor was restructured in the biennium 2008-2009, with the Investigations Division being merged with the Prosecution Division. As a result of this merger, investigators, analysts, researchers and other trial support staff now work directly on specific cases, under the leadership of a senior trial attorney. These measures reflect the shift of emphasis from investigations to the prosecutorial aspect of the work of the Office of the Prosecutor. Investigating staff members will, however, still have a crucial role to play in assisting the legal staff working on each case.

14. In support of the second pillar of the completion strategy, the Tribunal will continue to play an active role in monitoring the development of cases already transferred and assisting national prosecution and judicial authorities in the former Yugoslavia. The referral of cases to national jurisdictions has been central to the completion strategy. Thus far, 10 accused have been transferred by the referral bench to the War Crimes Chamber of the Court of Bosnia and Herzegovina, and two accused have been transferred to the authorities of Croatia and one accused to the authorities of Serbia for trial before the domestic courts of those countries. Neither of the two fugitives at large meet the criteria for referral to national jurisdictions and therefore no further referrals are envisaged during the biennium 2010-2011. A total of 17 investigative dossiers involving 43 persons have been transferred to national courts. The dossiers pertain to cases investigated by the Office of the Prosecutor, but for which an indictment was never issued by the Chambers. While no additional transfers of dossiers are envisaged in the biennium 2010-2011, legal support will continue to be provided by the Office of the Prosecutor after the handover of the files. The Office of the Prosecutor will also continue to monitor such trials, referred to the region under Rule 11 bis, through the Organization for Security and Cooperation in Europe (OSCE). The Office of the Prosecutor will also assist local authorities by providing information and documents, responding to multiple requests for assistance and answering questions, not only in relation to the transferred files but also in relation to other, related cases handled by the Tribunal and the local authorities. The Registry will continue to provide essential support to national courts, in particular with regard to requests for assistance in connection with documents and other evidentiary material filed with the Court, as well as issues relating to the protection of witnesses.

15. During the biennium 2010-2011, the Tribunal will be actively engaged in the transfer of know-how and in other capacity-building activities in the region of the former Yugoslavia, including participation in conferences, training seminars and other symposiums. In this context, the Office of the Prosecutor, with the support of the European Commission, will be launching a project which would permit visiting national prosecutors to spend time working in The Hague to review information and gain experience during the transition process. In the same perspective, on 28 May 2009, the Tribunal launched *The ITY Manual on Developed Practices*. This publication is aimed at preserving the institution's legacy and making its experience and know-how available to jurisdictions facing the responsibility of adjudicating international crimes. The result of a joint effort of the Tribunal and the United Nations Interregional Crime and Justice Research Institute (UNICRI), the manual provides a comprehensive description of the operating practices that the International Tribunal for the Former Yugoslavia has pioneered since its establishment. Further, the manual is an important tool for ensuring that the Tribunal's legacy lives on through the future prosecution of war crimes, crimes against humanity and genocide, not only by other international or hybrid courts but also by domestic judiciaries, particularly those in the region of the former Yugoslavia.

16. As regards the archives and the jurisprudence database, the Tribunal will continue to undertake a number of projects to support the development and implementation of an archives and records management strategy based on a consistent, standard-based approach across the two international tribunals and the United Nations Secretariat, in order to achieve responsible completion of the

mandate and to establish a preservation and access regime which meets the needs of both legacy and residual function requirements. Further, the Tribunal will start other preparatory work of a legal and administrative nature required for the smooth transfer to residual functions.

17. The overall resources required for the biennium 2010-2011 for the International Tribunal for the Former Yugoslavia amount to \$301,895,900 gross (\$279,847,400 net) before recosting, reflecting a net decrease in real terms of \$74,337,000 gross, or 19.8 per cent (\$62,219,600 net, or 18.2 per cent), compared to the revised appropriation for the biennium 2008-2009. The decrease (see table 2) reflects decreased requirements under Chambers (\$3,405,100), the Office of the Prosecutor (\$38,581,600), the Registry (\$51,758,500) and the records management and archives component (\$726,800) mainly due to the reduction in trial activity in 2011, partly offset by the funding of the accrued liabilities for payment of pensions to judges and their surviving spouses (\$20,171,000).

18. For the biennium 2010-2011, the International Tribunal for the Former Yugoslavia proposes the retention of 546 temporary posts reflecting a gradual reduction of 186 posts, or 25 per cent (86 Professional, 52 General Service and 48 Security Service posts) in the current authorized staffing level of 732. It is proposed that the functions of the abolished posts be gradually phased out throughout the biennium, in line with the completion of first-instance trials. In order to ensure that the Tribunal has the flexibility to accelerate or decelerate the phasing out of individual posts, it is proposed that 35 posts be abolished as of 1 January 2010 and 151 posts be abolished as of 1 January 2011, as reflected in table 3, but that funding be provided through general temporary assistance to enable critical functions of the posts to be maintained in order to support the trials to be held and completed at different dates during the biennium.

19. Furthermore, based on the latest trial schedule, the Tribunal has determined that some of the functions slated for termination in 2009 would need to continue in order to maintain certain critical functions in support of the ongoing trials. The funding to maintain these functions will be provided through general temporary assistance and will be gradually reduced during the biennium.

20. It is proposed to reclassify the post of Chef de Cabinet of the President of the Tribunal from P-5 to D-1 by redeploying a D-1 post from the Office of the Prosecutor to the Office of the President of the Tribunal, which is part of the Judicial Support Division in the Registry. The reclassification is proposed in view of the increase in the amount and range of the responsibilities of the post in respect to both its judicial and quasi- and non-judicial functions. The P-5 post made available by this reclassification would be redeployed from the Judicial Support Division to the Immediate Office of the Registrar to accommodate the post of Chief of the Immediate Office of the Registrar.

21. In the Division of Administration, it is proposed to reclassify the position of Chief of the General Services Section downward, from P-5 to P-4, to better reflect the level of responsibilities of the post in view of the projected reductions in the workload.

22. It is also proposed to redeploy two posts (1 P-4 and 1 P-3) from the Office of the Prosecutor to the Press and Information Office as of 1 January 2010 and two

posts (1 P-4 and 1 P-3) from the Office of the Prosecutor to the Immediate Office of the Registrar effective 1 January 2011.

23. As indicated in the preceding paragraphs, the overall resource requirements for the biennium 2010-2011 include provisions relating to the redaction and digitization of all the audio-visual materials of the Tribunal, including the archiving of records of the Office of the Prosecutor and administrative records, and the accrued liabilities relating to the pensions of retired judges.

24. The recosting at 2010-2011 rates of the proposed budgetary provisions contained in the present report is preliminary. For salaries relating to posts in the Professional and higher categories, adjustments reflect the projected movement of post-adjustment indices in 2009. Similarly, with regard to General Service salaries, recosting takes into account the forecast of probable cost-of-living adjustments based on anticipated inflation rates. The average vacancy rates for Professional and General Service posts realized in 2008 are proposed for the biennium 2010-2011. No attempt has been made to forecast the movement of the relevant currency vis-à-vis the United States dollar. The proposed budget will be recosted in December 2009 on the basis of the most recent data on actual inflation experience, the movement of post-adjustment indices in 2009, the outcome of salary surveys, if any, experience in regard to salary expenditure and the evolution of operational rates of exchange in 2009.

25. During the biennium 2010-2011, extrabudgetary resources are estimated at \$2,086,000 and will be utilized for a variety of activities related to supporting the work of the Office of the Prosecutor and the Registry. The estimated level of extrabudgetary resources reflects a decrease of \$1,392,900 owing to the completion of several projects.

Table I
Percentage distribution of resources by component

<i>Component</i>	<i>Regular budget</i>	<i>Extrabudgetary</i>
1. Chambers	4.2	—
2. Office of the Prosecutor	19.3	34.7
3. Registry	68.6	65.3
4. Records management and archives	1.2	—
5. Liabilities for payment of pensions to judges and surviving spouses	6.7	—
Total	100.0	100.0

Table 2
Resource requirements by component

(Thousands of United States dollars)

(1) Assessed budget^a

Component	2006-2007 expenditure	2008-2009 appropriation	Resource growth		Total before recosting	Recosting	2010-2011 estimate
			Amount	Percentage			
1. Chambers	13 034.5	16 106.9	(3 405.1)	(21.1)	12 701.8	(392.7)	12 309.1
2. Office of the Prosecutor	99 192.2	96 849.4	(38 581.6)	(39.8)	58 267.8	(1 560.9)	56 706.9
3. Registry	237 060.0	258 727.5	(51 758.5)	(20.0)	206 969.0	(5 513.1)	201 455.9
4. Records management and archives	—	4 549.1	(762.8)	(16.8)	3 786.3	(118.1)	3 668.2
5. Liabilities: pensions of judges	—	—	20 171.0	—	20 171.0	—	20 171.0
Total (gross)	349 286.7	376 232.9	(74 337.0)	(19.8)	301 895.9	(7 584.8)	294 311.1
Income							
Income from staff assessment	37 262.4	33 900.6	(12 129.6)	(35.8)	21 771.0	(204.5)	21 566.5
Other income	222.8	265.3	12.2	4.6	277.5	—	277.5
Total (net)	311 801.5	342 067.0	(62 219.6)	(18.2)	279 847.4	(7 380.3)	272 467.1

(2) Extrabudgetary

	2006-2007 expenditure	2008-2009 estimate	2010-2011 estimate
Activities	3 855.2	3 478.9	2 086.0
Total	3 855.2	3 478.9	2 086.0
Total (1) and (2)	315 656.7	345 545.9	274 553.1

^a Provisions relating to after-service health insurance for the Tribunal, estimated at \$15.1 million, are included in the report of the Secretary-General on liabilities and proposed funding for after-service health insurance benefits (A/64/366).

Table 3
Post requirements

Category	2008-2009 revised appropriation	Proposed reduction		Extrabudgetary		Total	
		1 January 2010	1 January 2011	2008-2009	2010-2011	2008-2009	2010-2011
Professional and above							
USG	1	—	—	—	—	1	1
ASG	1	—	—	—	—	1	1
D-2	1	—	—	—	—	1	1
D-1	5	—	—	—	—	5	5
P-5	27	(3)	(4)	—	—	27	20
P-4/3	222	(6)	(40)	—	—	222	176

Category	2008-2009 revised appropriation	Proposed reduction		Extrabudgetary		Total	
		1 January 2010	1 January 2011	2008-2009	2010-2011	2008-2009	2010-2011
P-2/1	90	(14)	(19)	—	—	90	57
Subtotal	347	(23)	(63)	—	—	347	261
General Service							
Principal level	11	—	(1)	—	—	11	10
Other level	239	(8)	(43)	—	—	239	188
Subtotal	250	(8)	(44)	—	—	250	198
Other							
Security Service	135	(4)	(44)	—	—	135	87
Subtotal	135	(4)	(44)	—	—	135	87
Total	732	(35)	(151)	—	—	732	546

II. Programme of work and resource requirements

A. Chambers

26. The Chambers comprise 14 permanent judges (nine trial judges and five judges assigned to the Appeals Chamber), 12 ad litem judges and two judges of the International Criminal Tribunal for Rwanda assigned to the Appeals Chamber. It is the judicial organ of the Tribunal, performing its core activity: determination of the guilt of persons accused of serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. Through its judicial activities, the Chambers will continue to ensure that all accused persons receive a fair trial without undue delay.

27. The main objective of the Chambers for the biennium 2010-2011 is to continue to undertake up to seven trials at a time and to complete all interlocutory appeals and appeals from judgement as expeditiously as possible, through the use of 16 permanent and up to 12 ad litem judges. Maintaining this high level of activity at first instance is essential to the expeditious completion of trials. Only two accused individuals remain at large out of the 161 persons indicted. The full capacity of the Chambers will continue to be fully utilized during the biennium.

28. During the period from the beginning of 2008 to mid-2009, the Tribunal had up to seven trials running simultaneously, involving 28 accused persons. The verdict was delivered in four trials, including the first verdict in one case involving six accused. In addition, three contempt judgements were rendered. During the same period, there were 19 post-judgement cases on appeal, involving 30 convicted persons. The Appeals Chamber rendered final judgement on appeal in eight cases, as well as issuing judgements or decisions on three review applications, one contempt appeal and three appeals from decision on referral.

29. From mid-2009, three of the remaining four cases will commence and seven trials will continue to run throughout 2009. An eighth trial is currently adjourned owing to allegations of contempt, which are being investigated. Following the start

of the three new cases, the remaining case is expected to commence in November 2009. Pretrial activity will continue in each of these cases until their commencement. Appeals activity will include at least 10 appeals from judgement and numerous interlocutory, referral, contempt and review appeals as they arise.

30. During the biennium 2010-2011, it is expected that the Chambers will work on the following: up to seven trials (running concurrently until they end), 30 pre-appeal procedures, 30 appeals from final trial chamber judgements (12 from the International Tribunal for the Former Yugoslavia and 18 from the International Criminal Tribunal for Rwanda, as Appeals Chamber judges and staff work on appeals for both Tribunals) and all interlocutory appeals arising from trial. The referral bench of the Chambers will continue to be constituted. While no new referral applications are expected at the current stage, the bench deals with ongoing obligations relating to cases already transferred to domestic courts in the former Yugoslavia. In addition, it will be necessary for the Chambers to deal with contempt trials and appeals as they arise.

31. During the biennium 2010-2011, the Chambers will continue to work on the three multi-accused cases, involving up to six accused, each of which commenced during the previous biennium. Of these multi-accused cases, which resulted from the Prosecutor's policy of joining related indictments whenever possible, the one with six accused will continue to be extremely demanding of the resources of the Chambers. In addition to the fact that cases involving several accused being tried simultaneously generate far more motions at trial, they also generate more interlocutory appeals than cases involving fewer accused. The extra work generated by the multi-accused approach is considered necessary as it should reduce overall trial time substantially in comparison with holding separate trials for each of the accused. It is notable, for example, that while on average eight accused were on trial at any one time during the biennium 2004-2005, it is expected that an average 14 accused will be on trial at the beginning of 2010, with that number dropping during the fourth quarter of 2010 as the trials are brought to a close. The multi-accused cases will also reach the appeal level during the biennium, meaning that one case could comprise up to eight individual appeals, an enormous increase in complexity compared to appeal cases to date. The first such complex appeal is currently before the Appeals Chamber.

32. Detailed information on the progress made in the implementation of the completion strategy is provided in the June 2009 reports (S/2009/252, annexes I and II) and December 2008 reports (S/2008/729, annexes I and II) of the President and the Prosecutor of the Tribunal to the Security Council. At the time of writing of the present report, current projections indicate that the Tribunal will complete all but three of its trials during 2010. Two trials are expected to be completed in February 2011, with the last remaining case scheduled for completion by February 2012. All but two appeals are now envisaged for completion before the end of 2012, with the last two appeals extending into early 2013. The slippages foreseen in estimated completion dates are for the most part attributable to the late arrests of fugitives, whose trials could have been joined with those of other accused persons (with the same crime base) had they been apprehended earlier. Currently the mandate of all of the Tribunal's permanent trial and ad litem judges is due to expire on 31 December 2009 and the mandate of the appeals judges on 31 December 2010, as set out in Security Council resolution 1837 (2008) of 29 September 2008. In view of current projections and in order to allow for the necessary continuity in proceedings, the

President of the Tribunal has submitted a request to the Security Council for a further extension of the mandate of a number of permanent and ad litem judges.

33. Pursuant to the statute of the Tribunal, the maximum number of ad litem judges is 12. In order to allow the Tribunal to commence the trial of Karadzic in October 2009 without having to wait for the completion of the Popovic and others case, the Tribunal needed the assignment of an additional ad litem judge to be assigned. To that end, a request for a temporary increase from 12 to 13 during 2009 in the number of ad litem judges was submitted to the Security Council, which approved it in resolution 1877 (2009) on 7 July 2009.

34. The workload of the Appeals Chamber will continue to fully occupy the Appeals Chamber judges and their staff. The significant increase in workload expected during the biennium 2010-2011, in particular with respect to the numerous multi-accused cases currently at trial, is such that the number of judges and staff will need to be increased. In this connection, the President of the Tribunal following consultation with the President of the International Criminal Tribunal for Rwanda, has recommended to the Security Council an increase in the composition of the Appeals Chamber, from the current statutory level of seven judges (five for the International Tribunal for the Former Yugoslavia and two for the International Criminal Tribunal for Rwanda) to a total of 15 judges (nine for the International Tribunal for the Former Yugoslavia and six for the International Criminal Tribunal for Rwanda). In addition, provisions are made in the proposed budget for the redeployment of legal staff from trials to appeals to backstop the strengthened Appeals Chamber during the biennium 2010-2011.

35. The Chambers will continue to allow for a high level of courtroom activity by maximizing the use of available resources through the operation of the three courtrooms over two shifts daily, exceeding normal working hours. Trial Chambers will continue to make use of any free courtroom space to hold additional hearings in their cases. Even the two short court recesses each year, used for carrying out courtroom maintenance as well as for drafting judgements and pretrial decisions, are now open for the Chambers to use to conduct additional hearings to expedite the completion of their cases.

36. The Scheduling Working Group, chaired by the Vice-President of the Tribunal, will continue to be a key advisory tool for the completion strategy as well as an indispensable tool for budget preparation purposes. The working group is currently dealing with both trial and appeal schedules. Measures aimed at expediting appeals adopted pursuant to recommendations of the Working Group on Speeding Up Appeals will continue to be used and new measures recommended in the report of the reconstituted Working Group on Speeding Up Appeals will also be implemented. The possibility of embedding translators in French-language trial teams and in teams dealing with cases of self-represented accused persons, as well as a number of measures aimed at minimizing the impact of delays in translation on the expeditious disposal of appeals are being explored.

37. The Office of the President will continue to provide legal advice and logistical support to the President of the Tribunal in the exercise of his or her functions. The President is the highest authority of the Tribunal, acting as its institutional head. He or she is responsible for the overall execution of the mission of the Tribunal and for representing the Tribunal before its parent body, the Security Council, and the

General Assembly. The President performs representational functions vis-à-vis heads of mission, embassies of Member States and the Secretary-General.

38. Pursuant to rule 19 of the Rules of Procedure and Evidence, the President of the Tribunal also coordinates the work of the Chambers, supervises the activities of the Registry and exercises all other functions conferred on him or her by the statute and the Rules. These functions can be divided into the following three categories:

(a) Judicial functions: pursuant to article 14 (2) of the statute of the International Tribunal for the Former Yugoslavia and article 12 (2) of the statute of the International Criminal Tribunal for Rwanda, the President of the Tribunal is the presiding judge of the appeals chambers of both tribunals. The President is the sole authority responsible for assessing reports that a State has failed to comply with an obligation under the statute and, depending on the circumstances of the case, for notifying the Security Council thereof;

(b) Internal functions: pursuant to rule 23 bis of the Rules, the President of the Tribunal is the Chair of the Coordination Council responsible for ensuring the coordination of the activities of the three organs of the Tribunal;

(c) Quasi-judicial functions: pursuant to rule 23, the President is the Chair of the Bureau and is responsible for reviewing all major matters arising from the functioning of the Tribunal. The President also chairs, pursuant to rule 19 (A), the plenary meetings of the Tribunal during which the judges adopt and amend the Rules, decide upon matters relating to the internal functioning of the Chambers and the Tribunal and determine or supervise the conditions of detention.

39. Pursuant to the statute, the Rules and various directives, the President of the Tribunal is entrusted with the right of final review pertaining to matters such as the enforcement of sentences, legal aid/defence counsel issues and the application of such directives as the Rules of Detention and the Directive on the Assignment of Defence Counsel. In accordance with article 13 ter of the statute, the President is also responsible for requesting the Secretary-General to appoint ad litem judges to the trial chambers.

40. For the next biennium, a matter of primary importance for the Office of the President will be to continue to carry forward the completion strategy. Coordination must be maintained, with States and international organizations contributing, as appropriate, to the strengthening of national judicial systems of the States of the former Yugoslavia in order to facilitate the implementation of the completion strategy.

Outputs

41. During the biennium, the following outputs will be delivered:

(a) Courtroom activities: initial appearances, status conferences, pretrial conferences, trials, appeals and delivery of judgements;

(b) Decisions relating to, inter alia, review and confirmation of indictments, arrest and other warrants, various pretrial motions, motions during trial and appeal, applications for additional evidence and interlocutory appeals and reviews;

(c) Judgements on the merits in relation to trials and appeals (appeal activities are for both tribunals);

- (d) Judgements on contempt cases at both trial and appeal;
- (e) Review of the Rules of Procedure and Evidence, Practice Directions and the Rules of Detention and proposal of amendments to the statute of the Tribunal to the Security Council;
- (f) Reports of the President to the Security Council, as requested by a trial chamber or the Prosecutor, as to non-compliance by States with orders of the Tribunal;
- (g) Annual report to the General Assembly, six-monthly report to the Security Council and requests for international assistance to States;
- (h) Press releases on matters of importance to the Tribunal as a whole;
- (i) Special events: hosting of visiting dignitaries, usually at the level of ambassador or minister for foreign affairs, and Heads of State; establishing and maintaining high-level contacts with Governments of Member States to facilitate and improve cooperation with the Tribunal; and swearing in of new judges;
- (j) Relations with non-governmental organizations: requesting non-governmental organizations and others to submit amicus curiae briefs on issues of general importance under consideration by Chambers;
- (k) Participation in activities within the United Nations system: annual statement by the President to the General Assembly, participation in meetings concerning the role of the Tribunal within the United Nations system, cooperation with the International Criminal Tribunal for Rwanda and participation in discussions concerning other international judicial entities;
- (l) Liaison with the Office of the High Representative and the State Prosecutor of Bosnia and Herzegovina in relation to the referral of cases.

Table 4
Resource requirements

Category	Resources (thousands of United States dollars)		Posts	
	2008-2009	2010-2011 (before recosting)	2008-2009	2010-2011
Assessed budget				
Non-post	16 106.9	12 701.8	—	—
Total	16 106.9	12 701.8	—	—

42. The amount of \$12,701,800, reflecting a net decrease of \$3,405,100 compared to the biennium 2008-2009, comprises non-post requirements, as follows: (a) \$12,520,000 to provide compensation for 9 trial judges, 5 appeals judges and 12 ad litem judges based on 272 work-months for permanent trial and appeals judges and 168 work-months for ad litem judges; (b) \$30,000 for the engagement of consultants to provide expertise not available in-house to undertake three specialized legal briefs per year; and (c) \$151,800 for the travel of the President and Vice-President of the Tribunal to Headquarters in New York and to central and western Europe, of 26 judges to the Joint Judges Seminar (International Tribunal for

the Former Yugoslavia/International Criminal Tribunal for Rwanda) and of 12 judges to the field to view crime scenes.

43. The net decrease of \$3,405,100 is mainly attributable to the gradual departure of 4 permanent trial judges and 10 ad litem judges, resulting from the completion of first-instance trials during the biennium 2010-2011, and reduced requirements under consultants and travel, partially offset by increases under common costs of judges and pensions of former judges due to the additional number of departing judges.

44. Costs relating to the two remaining appeals judges are included in the proposed budget for the International Criminal Tribunal for Rwanda (A/64/478).

B. Office of the Prosecutor

45. The Office of the Prosecutor is mandated to investigate and prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The role and responsibilities of the Prosecutor consist in the investigation and prosecution of the crimes listed in articles 2, 3, 4 and 5 of the statute of the International Tribunal for the Former Yugoslavia. The Prosecutor is responsible for the collection of evidence establishing the commission of these crimes, the tracking and arrest of those indicted and the presentation of charges and evidence against them before the Chambers of the Tribunal.

46. The biennium 2008-2009 was, for the Office of the Prosecutor, a period of intense activity marked by continued commitment to complete trials and appeals effectively in order to meet the goals of the completion strategy. It should be recalled that in December 2004 the Office of the Prosecutor met the first milestone of the completion strategy by issuing its final indictments.

47. To implement the Tribunal's completion strategy, the Office of the Prosecutor focused on transferring cases of intermediate and lower rank accused to the former Yugoslavia. The Office of the Prosecutor furthered the process of transferring cases of intermediate and lower rank accused under rule 11 bis and investigation files/dossiers to national jurisdictions. All rule 11 bis cases have now been transferred to States of the region, resulting in eight rule 11 bis referral motions (six to Bosnia and Herzegovina, one to Croatia and one to Serbia), which were granted, involving 13 accused. Further, the Office of the Prosecutor transferred directly three investigation files/dossiers involving 10 suspects to prosecutors in Bosnia and Herzegovina and it is anticipated that seven additional investigation files/dossiers, involving 20 suspects, will be transferred by the end of the current biennium to Bosnia and Herzegovina. At the end of the biennium, no further rule 11 bis cases or investigative files/dossiers are scheduled to be transferred to the region.

48. During the biennium 2008-2009, the Office of the Prosecutor undertook measures to expedite its work and increase efficiency. With a view to improving judicial efficiency and expedite trials, the Office of the Prosecutor merged related indictments, whenever possible, and ran trials with more than four accused. Consequently, two of the multiple-accused trials, involving 13 accused, are scheduled to be completed in 2009. The merger of these high-level cases resulted in a substantial overall reduction in the length of proceedings.

49. During the biennium 2010-2011, in the context of the Tribunal's completion strategy, the activities of the Office of the Prosecutor will rest on the following four important priorities:

(a) Successful completion of trials and appeals

(i) The Office of the Prosecutor will focus on ongoing trials and appeals, including the multiple-accused cases. During the biennium 2010-2011, the Office of the Prosecutor will be fully engaged in successfully completing seven of the eight remaining trials and increasing the pace of the appeals work. Eight cases are to be prosecuted and tried, involving a total of 15 accused. By March 2011, it is anticipated that the Office of the Prosecutor will have completed seven of the eight remaining trials, with the eighth trial, that of Radovan Karadzic, to be completed in the first quarter of 2012. Appeals will continue into 2012 and 2013. Based on previous experience, it is expected that each first-instance decision will be appealed. It is therefore projected that during the biennium 2010-2011, there will be 11 appeals, including in the three multiple-accused cases, involving a total of 32 persons. These projections do not take into account the trials of fugitives, should they be arrested. As at October 2009, two persons indicted by the Tribunal remain at large, Ratko Mladic and Goran Hadzic;

(ii) To keep up the pace and schedule of the Chambers and to fulfil the goals of the completion strategy, it is crucial that the Office of the Prosecutor maintain an adequate level of resources. To support trials and appeals, the Office will require to maintain a sufficient number of trial attorneys, assisted by a core investigative capacity (including researchers, analysts and trial support staff) dedicated to completing trials and appeals. Therefore, based on the court schedule projections, estimates for the biennium 2010-2011 take into account a substantial decrease in staff, commensurate with the reduced trial workload;

(iii) As in the previous biennium, resources for the Office of the Prosecutor will be allocated in accordance with a workplan which sets out the requirements for all cases to be tried in 2010 and 2011. The plan foresees adequate allocation of resources, including attorneys, investigators, analysts, researchers and trial support staff, to all cases, whether in trial or appeal. To facilitate this review, cases have been divided according to their level of complexity;

(iv) In line with the Tribunal's completion strategy, the Office of the Prosecutor will continue to undertake measures aimed at reducing the length of trials and improving judicial efficiency. Further, taking into account the fairness of the judicial process, the Office of the Prosecutor will insist on taking measures to increase judicial efficiency. The Office of the Prosecutor will insist on putting forward proposals to the Tribunal's Rules Committee, headed by judges, which formulates proposals to the Plenary of Judges, which can amend the Tribunal's Rules of Procedure and Evidence;

(v) To improve efficiency and support all trials and appeals effectively, a restructuring of and organizational changes to the Office of Prosecutor are envisaged. One such change was the merging of the Office of the Prosecutor's Investigation and Prosecution Divisions at the beginning of 2008.

Consequently, investigators, analysts, researchers and other trial support staff currently work directly on specific cases, under the leadership of a Senior Trial Attorney. The position of Chief of Investigations has been redeployed and it is anticipated that staff from the Prosecution Division will be redeployed to the Appeals Division (30 Professional and 7 General Service (Other level) posts). These measures reflect the emphasis that is now being placed on the prosecutorial aspect of the work of the Office of the Prosecutor. Investigating staff members still have a crucial role to play and will be directly available to assist the legal staff working on each case. These measures have improved internal efficiencies and have enhanced the Office's work product:

(vi) The reorganization of the Office of the Prosecutor included positioning the Transition Team, the Tracking Team and Field Office operations under the direct supervision of the Prosecutor assisted by the Deputy Prosecutor. This measure improved coordination in matters of cooperation with the States of the former Yugoslavia, which includes the tracking of fugitives, the transfer of cases and the provision of assistance to those States, together with capacity-building efforts. This internal reorganization reflects the importance of the transfer and tracking efforts undertaken by the Office of the Prosecutor, which will remain priorities for the biennium 2010-2011;

(vii) Another aspect of the internal reorganization was the strengthening of the Appeals Division, which is no longer part of the Immediate Office of the Prosecutor and is headed by a Director. As of 2009, the workload has increased, as multiple-accused cases are appealed. Experience shows that judgements in almost all such cases result in an appeal. The increase in the number of accused to be tried in the biennium 2010-2011, particularly with the arrests of Karadzic and Zupljanin, will have an impact on the volume and complexity of the cases on appeal and generate extensive additional work. Further, interlocutory appeals during the trials will generate more complex work, in particular for the multiple-accused cases, as they raise new complex legal issues. Therefore, it is proposed to redeploy a number of posts internally from the Prosecution Division.

(b) Tracking and arrest of fugitives

(i) The Office of the Prosecutor will remain actively engaged in seeking the arrest of the two fugitives who remain at large, Ratko Mladic and Goran Hadzic. The tracking and arrest of those two fugitives will remain a priority for the Office of the Prosecutor during the biennium 2010-2011;

(ii) No resources are being estimated in the present report for the event that the fugitives are arrested. The Secretary-General will revert to the General Assembly with a detailed request for resources should either of the two fugitives be arrested during the biennium 2010-2011. The Office of the Prosecutor is of the opinion that the remaining fugitives should be tried in The Hague. However, even if they are still at large after 2012, when the Tribunal has completed all first-instance trials, they must not escape international justice and must be tried by an international tribunal, preferably the International Tribunal for the Former Yugoslavia.

(c) Transition

(i) All rule 11 bis cases have been transferred to the region and very little support work is required. In addition, it is anticipated that all category II cases will be transferred to the region by the end of 2009. This will require work to support the State Prosecutor's Office in Bosnia and Herzegovina. A further priority of the Office of the Prosecutor's strategy in the biennium 2010-2011 is to continue to support national prosecution and judicial authorities in the former Yugoslavia;

(ii) The core functions of the Transition Team are consistent with the Office of the Prosecutor's expressed commitment to transfer of the responsibility for war crimes prosecutions from the international to the national level and related capacity-building. In his November 2008 report to the Security Council, the Prosecutor expressed his assessment that interaction with national prosecutors in the former Yugoslavia were continuing to develop, as were efforts to transfer know-how and help build the capacity of national courts (S/2008/729, para. 65);

(iii) The members of the Transition Team have developed procedures and have become very skilled and experienced in handling the material of the Office of the Prosecutor, applying great diligence in distinguishing "public" and confidential material and applying the respective procedures. To ensure the same standard of quality and efficiency at this interface between local prosecution offices/courts and the Office of the Prosecutor, core staffing is required to support this work during the biennium 2010-2011;

(iv) The Transition Team assembles and organizes available evidence, reviews the evidence, contacts witnesses, handles witness protection questions and other issues of confidentiality such as issues related to the protection of material under rule 70. During and after the transfer of files, the Transition Team continues to assist local authorities by providing information and documents, responding to multiple requests for assistance and addressing queries, not only in relation to the transferred files but also in relation to other related cases handled by the Tribunal. The Transition Team has also granted local prosecutors access to document databases and specific formalized arrangements have been made to ensure them access to the Office of the Prosecutor's evidence collection, including the Electronic Disclosure System, which is an electronic database containing the majority of the evidence collection;

(v) The Office of the Prosecutor, in association with the Chambers and the Registry, will continue to be actively engaged in other capacity-building activities. Through frequent contacts with the prosecutors and courts, the Office will continue to participate in conferences, training seminars and other symposia. In this connection, the Office of the Prosecutor developed a project with the support of the European Commission allowing visiting national prosecutors to spend time working with the Transition Team in order to access information and gain experience in the transition process.

(d) Legacy

As the dates of completion draw near, the Office of the Prosecutor will devote special attention to the legacy of the Tribunal's work. Some of the work product and

tools of the Office will need to be preserved. The Immediate Office of the Prosecutor will play a central role in legacy matters, in coordination with the Registry and the Chambers. The Office of the Prosecutor is currently actively involved in the working groups in relation to archiving and the residual mechanism. This activity will continue during the biennium 2010-2011.

Table 5

Objectives for the biennium, expected accomplishments and indicators of achievement

Objective: To investigate and prosecute in a timely and fair manner persons responsible for serious violations of international humanitarian law and ensure that the requirements of the Security Council are fulfilled with regard to the implementation of the completion strategy and to position the Office of the Prosecutor for the transfer of criminal cases against accused persons to the national courts of the former Yugoslavia

Expected accomplishments	Indicators of achievement
(a) Effective management and implementation of the completion strategy	(a) Number of first-instance trials completed during the biennium
	<i>Performance measures:</i>
	2006-2007: 6 first-instance trials
	Estimate 2008-2009: 7 first-instance trials
	Target 2010-2011: 7 first-instance trials
(b) Gradual transfer of indicted cases and investigative files to national jurisdictions in the region	(b) Number of investigation files and dossiers transferred to local prosecutors in the region
	<i>Performance measures:</i>
	2006-2007: 5 files (9 persons)
	Estimate 2008-2009: 10 files (30 persons)
	Target 2010-2011: no file
(c) Efficient utilization of trial and appeal support resources	(c) (i) Number of ongoing trials
	<i>Performance measures:</i>
	2006-2007: 6 concurrent trials
	Estimate 2008-2009: 7 concurrent trials
	Target 2010-2011: 7 concurrent trials
	(ii) Number of accused in appeals on the merit proceedings completed during the biennium

	<i>Performance measures:</i> 2006-2007: 11 persons Estimate 2008-2009: 11 persons Target 2010-2011: 22 persons
(d) Enhanced readiness of cases at pretrial litigation	(d) (i) Number of cases in pretrial litigation <i>Performance measures:</i> 2006-2007: 9 cases Estimate 2008-2009: 8 cases Target 2010-2011: 2 cases (ii) Percentage of deadlines met without extensions <i>Performance measures:</i> 2006-2007: 85 per cent Estimate 2008-2009: 100 per cent Target 2010-2011: 100 per cent

External factors

50. The Office of the Prosecutor is expected to meet its objective and expected accomplishments on the assumption that: (a) the States of the former Yugoslavia cooperate in the arrest and transfer of indicted persons to The Hague and in the provision of information; (b) there is normal functioning of judiciaries in the States of the former Yugoslavia, including the War Crimes Chamber of the Court of Bosnia and Herzegovina, so that cases may be transferred and tried at the domestic level, and (c) there are no delays in the proceedings for reasons beyond the Tribunal's control, such as illness of the accused, unforeseen disclosure of material, requests for replacement of defence counsel, requests for review of cases already tried, other motions affecting the proceedings and the availability of witnesses to certify statements and provide testimony.

Outputs

51. During the biennium, the following outputs will be delivered:

(a) Investigative outputs: witness statements, expert witness statements, summaries of witness interviews, witness schedules and protective measures for witnesses; reports of on-site investigations; reports on military and civilian political structures and events, on arrests of fugitives, on intelligence related to suspects and fugitives and on missions; collection of evidence; reports generated through computer searches of collected evidence for documents relevant to investigations, trials and appeals and reports generated by computer searches for purposes of disclosure under different rules; demographic reports and maps; requests for

assistance; unofficial translations and English summaries of documents written in Bosnian, Croatian or Serbian; limited project-based exhumation work; and training;

(b) Prosecution outputs: filings related to the prosecution of cases and appeals, including: amended indictments, motions, responses to defence motions, witness statements, opening briefs, closing briefs, sentencing briefs, appeals on the merits, interlocutory appeals, plea agreements and miscellaneous applications for orders from judges or trial chambers, including applications for subpoenas, search warrants, the detention of suspects and the transmission of arrest warrants;

(c) Outputs related to trial preparation: exhibits, witness summaries, extensive searches for relevant material to be disclosed to the defence; training courses including induction, legal issues and advocacy; and legal opinions on issues of international law;

(d) Information management outputs: indexes of evidentiary material and information sources, including witness statements, videotapes and audiotapes, intelligence material submitted under rule 70, and press and other relevant, freely accessible material; custody, control and storage of material submitted under chain-of-custody procedures, including decontamination and preservation; software systems and modifications to computer systems, and database applications for the Office of the Prosecutor, including the Electronic Disclosure System and CaseMap and Sanction software packages; and training courses for all staff;

(e) Provision of support for the transfer of cases to the States of the former Yugoslavia: preparation of investigation files, review and preparation of evidence, analysis of case files, exchange of knowledge with domestic prosecution authorities, exchange of know-how and training;

(f) Legacy issues: engaging in coordination with the Registry and Chambers in the preparation of the files and electronic data to be preserved and forming part of the Tribunal's legacy;

(g) Management outputs: policy papers and directives, guidelines related to legal practice, annual reports, funding proposals, budget preparation, reports on activities of States relevant to cooperation; and press releases, speeches, statements and briefings.

Table 6
Resource requirements

Category	Resources (thousands of United States dollars)		Posts	
	2008-2009	2010-2011 (before recosting)	2008-2009	2010-2011
Assessed budget				
Post	57 696.2	32 979.4	195	117
Non-post	27 251.1	19 821.7	—	—
Staff assessment	11 902.1	5 466.7	—	—
Subtotal	96 849.4	58 267.8	195	117
Extrabudgetary	349.0	722.9	—	—
Total	97 198.4	58 990.7	195	117

Table 7
Post requirements

Category	2008-2009 revised appropriation	Proposed reduction		Extrabudgetary		Total	
		1 January 2010	1 January 2011	2008-2009	2010-2011	2008-2009	2010-2011
Professional and above							
USG	1	—	—	—	—	1	1
D-2	1	—	—	—	—	1	1
D-1	2	(1)	—	—	—	2	1
P-5	11	—	(3)	—	—	11	8
P-4/3	86	(8)	(21)	—	—	86	57
P-2/I	30	(13)	(3)	—	—	30	14
Subtotal	131	(22)	(27)	—	—	131	82
General Service							
Principal level	1	—	(1)	—	—	1	—
Other level	63	(7)	(21)	—	—	63	35
Subtotal	64	(1)	(22)	—	—	64	35
Total	195	(29)	(49)	—	—	195	117

52. Resources under posts and staff assessment in the amount of \$32,979,400 and \$5,466,700, respectively, would provide for the continuation of 117 temporary posts required during the biennium 2010-2011. The reduction under posts (\$24,716,800) and staff assessment (\$6,435,400) relates to the gradual abolition or redeployment of 78 posts in 2010 and 2011, consisting of 49 Professional, 1 General Service (Principal level) and 28 General Service (Other level) posts, as reflected in table 7, and the removal of the biennium 2008-2009 first-year provision for the 130 posts abolished as of 1 January 2009.

53. The phasing out of functions of posts in the Office of the Prosecutor will be implemented in stages throughout the biennium 2010-2011 in line with the completion of first-instance trials and consequential reduction of the workload, as follows: (a) January 2010: 9 posts (1 P-3, 5 P-2 and 3 General Service (Other level)); (b) June 2010: 7 posts (1 P-3, 3 P-2 and 3 General Service (Other level)); (c) August 2010: 2 posts (2 P-2); (d) October 2010: 2 posts (1 P-3 and 1 P-2); (e) November 2010: 6 posts (1 P-4, 2 P-3, 2 P-2 and 1 General Service (Other level)); (f) January 2011: 8 posts (2 P-3, 2 P-2, 1 General Service (Principal level) and 3 General Service (Other level)); (g) March 2011: 39 posts (3 P-5, 5 P-4, 12 P-3, 1 P-2 and 18 General Service (Other level)). In order to ensure that the Office has the flexibility to accelerate or decelerate the phasing out of individual posts, it is proposed that 26 posts whose functions will be phased out during 2010 be abolished as of 1 January 2010 and 47 posts whose functions will be phased out during 2011 be abolished as of 1 January 2011, but that funding be provided through general temporary assistance to enable critical functions of the posts to be maintained to support the trials to be held and completed at different dates during the biennium, as described above.

54. It is proposed to redeploy three posts from the Office of the Prosecutor to the Registry as of 1 January 2010, as follows: 1 D-1 to accommodate the reclassification of the post of Chef de Cabinet of the President of the Tribunal and 1 P-4 and 1 P-3 post to the Press and Information Office. In addition, in order to support the preparatory legal work associated with the Tribunal's transition to residual functions, it is proposed to redeploy two posts (1 P-4 and 1 P-3) from the Office of the Prosecutor to the Immediate Office of the Registrar in January 2011.

55. Non-post requirements in the amount of \$19,821,700, reflecting a decrease of \$7,429,400, would provide for general temporary assistance including peak trial and appeals support, the document translating and indexing project, overtime, expert witnesses and consultants to assist trial teams in the trial stages of proceedings, travel of investigators and prosecutors and contractual services for the ongoing training of the staff of the Office of the Prosecutor.

56. The provision under general temporary assistance also includes requirements to cover the functions of posts abolished in 2009 which are still needed during the biennium 2010-2011. It is proposed to gradually reduce these requirements during the biennium. The total requirements in this respect for the biennium are estimated at 1,230 work-months.

57. The decrease of \$7,429,400 reflects reduced requirements under other staff costs (\$6,481,600), consultants and experts (\$73,800), travel of staff (\$800,400) and contractual services (\$73,600), mainly due to the reduction in trial activity in 2011.

C. Registry

58. The Registry is responsible for the judicial administration of the Tribunal. It is composed of four main organizational units, namely, the Office of the Registrar, the Judicial Support Division, the Registry Advisory Section on Legal and Policy Matters, and the Division of Administration. For budgetary purposes, the Office of the President and the resident auditors are included under the Registry.

59. For the biennium 2010-2011, the Registry will focus on five principal objectives:

(a) Provision of continued support to trials and appeals in order to complete the Tribunal's mandate, particularly the completion of first-instance trials;

(b) Provision of continued support to national courts in the former Yugoslavia in connection with cases and dossiers of mid-level and lower-level accused and suspects, respectively, transferred to national jurisdictions, including the transfer of know-how and capacity-building;

(c) Preparation of transition towards the residual functions required after the conclusion of all trials and appeals, including assisting in the articulation and identification of the legacy of the Tribunal to stakeholders in the former Yugoslavia and beyond;

(d) Enhancement of the Tribunal's communications strategy;

(e) Provision of support to administrative policies and practices concerning staff retention, including establishing appropriate career transition policies as well

as staff training and development, and ensuring that the downsizing exercise is undertaken in a fair and transparent manner.

60. The Registry will continue to support and facilitate the expeditious conduct of proceedings, many of which involve high-level perpetrators. Throughout most of 2010, the Registry will be supporting the undertaking of seven simultaneous trials, one of which is a trial involving six accused. The Registry's capacity will be stretched to its limits and will be dedicated to ensuring efficient and fair trials. This remains the main priority for the biennium 2010-2011 as the Tribunal continues to focus on expediting proceedings. The need for efficient proceedings is all the more crucial in view of factors beyond the Tribunal's control, which may have an impact on the speed with which trials and appeals can be completed. For example, delays in the proceedings resulting from requests for review of cases already concluded, unforeseen disclosure of materials, requests for replacement of defence counsel, illness of the accused or counsel, the availability of witnesses to provide testimony and State cooperation may affect the timely completion of a trial or appeal.

61. In addition, it is envisaged that, during the biennium, there will be up to three cases involving self-represented accused. This will have an impact on the workload of the Judicial Support Services Division and, in particular, the Conference and Language Services Section and Court Management Support Services from the perspective of ensuring that the self-represented accused are provided with adequate facilities, documentation and resources for the conduct of their defence.

62. The Registry will continue to support the implementation of measures aimed at reducing the length of trials and appeals and improving efficiency. These include the e-Court system, which is being successfully applied to all proceedings. The implementation of Internet remote access to the judicial database (including for the State Court of Bosnia and Herzegovina) has enabled defence counsel to access the network from any location, thereby assisting in the efficient preparation and conduct of cases. Efficiency will also continue to be supported by: (a) the Office of Document Management, which saves on translation resources by avoiding duplication of translation requests; (b) the application of the pretrial and trial lump-sum defence payment system, which compels defence teams to prepare their strategies in advance of trial; and (c) the Defence Counsel Network, which has resulted in a more effective distribution of case-related documents.

63. In view of the increased number of appellate proceedings anticipated for the biennium 2010-2011, the Registry, in consultation with the Association of Defence Counsel, is currently finalizing a lump-sum legal aid policy for appeals. It is anticipated that the policy will be based on a lump-sum payment system similar to those for pretrial and trial. The new appeals legal aid policy, once implemented, is expected to have the same positive effect as the pretrial and trial policies; that is, a decrease in the administrative burden on the Tribunal's administration and the defence, cost efficiency and flexibility allowing defence counsel to plan their work within available resources.

64. In support of the second objective, the Registry has played a central coordinating role in assisting the development of the War Crimes Chamber of the State Court of Bosnia and Herzegovina. The Registry has also provided assistance in connection with the transfer of cases to national jurisdictions under rule 11 bis of the Rules of Proceedings and Evidence. While no additional transfers of cases under rule 11 bis are scheduled for the biennium 2010-2011, the Registry will continue to

provide essential support to national courts, in particular with regard to requests for assistance in connection with documents and other evidentiary material filed with the Tribunal, as well as in relation to the continuing protection of witnesses. The Registry will also be engaged in the transfer of know-how and in other capacity-building activities in the region of the former Yugoslavia, including through participation in conferences, training seminars and other symposiums.

65. Over the past few years, the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda have been discussing with the Office of Legal Affairs and the Informal Working Group on Tribunals of the Security Council the residual functions to be transferred to the proposed residual mechanism, as well as possible locations for the Tribunals' archives and the seat of the residual mechanism. The Office of Legal Affairs, in consultation with the Tribunals, has prepared a report on the above subjects for consideration by the Security Council (S/2009/258).

66. With regard to the fourth objective, the Communications Section will continue to promote the Tribunal's work and achievements through its daily contacts with the media. The Tribunal intends to foster awareness of the whole range of its activities and achievements by enhancing its communications strategy. This will also include strengthening the cooperation and exchange of information with stakeholders within and outside the former Yugoslavia, namely, local legal communities, non-governmental organizations, the media, educational institutions, victims' associations, women's groups, truth and reconciliation commissions, other professional bodies and the general public. In this connection, a restructuring of the Registry is proposed with a view to further developing efficiencies and coordination between the Communications Section and the Immediate Office of the Registrar.

67. The fifth main objective encompasses special measures to retain staff, including measures aimed at career transition and meeting staff development and training needs. To that end, the Tribunal in 2009 launched a comprehensive career development programme to support the career transition and development of staff of the Tribunal. In that connection, the Division of Administration will continue to implement the training and study programmes, initiated in the biennium 2008-2009, aimed at enhancing staff skills in the area of management, personal development and technical training. The Registry will continue to support these initiatives throughout the biennium 2010-2011, including by enabling staff, many of whom will be downsized during this period, to serve on missions or to engage in cross-training, as well as by assisting them to explore future employment opportunities. During the biennium 2010-2011, the Division of Administration, in consultation with the International Criminal Tribunal for Rwanda, will propose for the consideration of the General Assembly a set of measures for implementation during the downsizing stages of the Tribunal. Further, the Registry has been actively engaged in formulating a procedure to be used for the downsizing of posts in the biennium 2010-2011 in consultation with staff representatives. The Registry is committed to ensuring that this exercise will be implemented and communicated in an open and transparent manner, taking into consideration the interests of both the staff and the organization.

Table 8

Objectives for the biennium, expected accomplishments and indicators of achievement

Objective: The efficient administration and servicing of the Tribunal by the management of judicial, administrative and legal support to Chambers, the Office of the Prosecutor and, in a limited fashion, the defence, in line with the statute of the Tribunal, the Rules of Procedure and Evidence, United Nations regulations and rules and the Tribunal's completion strategy

Expected accomplishments	Indicators of achievement
(a) Timely implementation of formal actions taken in accordance with the agreed-upon completion strategy	(a) Percentage of actions completed on time <i>Performance measures:</i> 2006-2007: 95 per cent Estimate 2008-2009: 95 per cent Target 2010-2011: 95 per cent
(b) Increased public awareness of the activities of the Tribunal	(b) (i) Number of visitors to the Tribunal's website (virtual visitors) <i>Performance measures:</i> 2006-2007: 60 million hits Estimate 2008-2009: 70 million hits Target 2010-2011: 80 million hits (ii) Number of visitors to the Tribunal's premises (physical visitors) <i>Performance measures:</i> 2006-2007: 12,500 visitors Estimate 2008-2009: 14,000 visitors Target 2010-2011: 15,500 visitors
(c) Improved dissemination of information in the Bosnian, Croatian and Serbian languages (for court proceedings, considered by the Tribunal to be one language)	(c) Number of days between receipt and distribution of material <i>Performance measures:</i> 2006-2007: 0 to 2 days Estimate 2008-2009: 0 to 2 days Target 2010-2011: 0 to 2 days

(d) Needs of clients for sound, comprehensive and timely advice on legal and related policy matters are met

(d) (i) Number of international agreements negotiated and contracts on which advice is given

Performance measures:

2006-2007: 110 agreements

Estimate 2008-2009: 110 agreements

Target 2010-2011: 110 agreements

(ii) Number of administrative matters and those concerning the host country statute and Rules on which advice is given

Performance measures:

2006-2007: 120

Estimate 2008-2009: 120

Target 2010-2011: 100

(e) Effective legal support provided to judges

(e) Number of timely oral and written decisions and judgements

Performance measures:

2006-2007: 3,516

Estimate 2008-2009: 3,450

Target 2010-2011: 2,000

(f) Successful compliance with the Tribunal's legal aid system

(f) Number of cases in which a supplemental payment is required to ensure a fair trial

Performance measures:

2006-2007: 4 cases

Estimate 2008-2009: 3 cases

Target 2010-2011: 3 cases

(g) Improved judicial support services provided to Chambers, the Office of the Prosecutor and defence counsel

(g) Level of client satisfaction

Performance measures:

2006-2007: 95 per cent

Estimate 2008-2009: 95 per cent

Target 2010-2011: 95 per cent

(h) Increased effectiveness of administrative services

(h) Degree of satisfaction expressed by recipients of various administrative services

Performance measures:

2006-2007: 95 per cent

Estimate 2008-2009: 95 per cent

Target 2010-2011: 95 per cent

External factors

68. The Registry is expected to meet its objective and expected accomplishments on the assumption that: (a) the States of the former Yugoslavia cooperate in the arrest and transfer of indicted persons to The Hague and in the provision of information; (b) there is normal functioning of the War Crimes Chamber of the Court of Bosnia and Herzegovina and judiciaries in other countries of the former Yugoslavia to permit the referral of cases; (c) there are no delays in the proceedings for reasons beyond the Tribunal's control, such as illness of the accused, unforeseen disclosure of material, requests for replacement of defence counsel, requests for review of cases already tried, other motions affecting the proceedings or the availability of witnesses to certify statements and provide testimony; and (d) the Tribunal is able to retain staff until their services are no longer needed.

Outputs

69. During the biennium, the following outputs will be delivered:

(a) Victims and Witnesses Section: provision of safe transportation of witnesses from their residence to The Hague, liaison with States for exit and entry permits, travel documents, safe-conduct agreements and visas for pretrial and post-trial protection; provision of support services for the temporary and permanent relocation of witnesses; liaison with host Governments for the protection, safe accommodation and transportation of witnesses during trials; and implementation of the Tribunal's policies regarding the reimbursement of entitlements such as lost earnings and clothing allowance;

(b) Defence counsel services: provision of access to legal assistance for suspects and accused persons; revision of claims of indigence from suspects and accused persons; and implementation of the directive on the assignment of defence counsel and legal aid practices;

(c) Court management: implementation of procedures relating to the confirmation, amendment or withdrawal of indictments, the issuing of arrest warrants, the addressing of cases of failure to execute a warrant, the appearance of the accused, detention on remand and provisional release and procedures to obtain depositions; organization and scheduling of trials and other hearings, cases of contempt of court, procedures relating to *amici curiae*, summonses of witnesses and experts, recordkeeping and procedures for the restitution of property in connection with compensation for victims; and procedures relating to appellate and review proceedings, pardons and commutations of sentence;

(d) Registry Advisory Section: negotiation of international agreements on the enforcement of sentences and relocation of witnesses; liaison with the host country on privileges and immunities of judges and staff; and drafting of policy papers, directives and guidelines relating to legal practice;

(e) Detention facility management: provision of a secure detention facility for detainees; provision of a remand programme in accordance with international standards and in adherence to the Tribunal's Rules of Detention; negotiation and cooperation with the host State authorities to ensure that the detention facilities of the Tribunal meet the standards set out in existing agreements and required by non-governmental organizations responsible for monitoring such facilities;

(f) Conference and language support: provision of simultaneous interpretation for all court hearings into and from English, French and Bosnian/Croatian/Serbian, and consecutive interpretation during interviews of victims and witnesses; translation from and into English, French and Bosnian/Croatian/Serbian for the Registry, the Chambers, the Office of the Prosecutor and the defence; and transcripts of court proceedings in English and French for every hearing in the courtroom and the plenary meetings of judges;

(g) Publications: publication of various information materials relating to court activity and the broader work of the Tribunal;

(h) Electronic, audio and video issuances: production and broadcast (in electronic format) of trial exhibits within the courts; and time-delayed video broadcasting of Tribunal proceedings to public areas of the Tribunal and real-time audio broadcasting of Tribunal proceedings to the public gallery of the courtroom in English, French and Bosnian/Croatian/Serbian;

(i) Booklets, pamphlets and fact sheets: publication of regular bulletins of Tribunal activities;

(j) Press releases: issuance of press releases to the local, national and international press regarding trial activities;

(k) Library services: provision of library services regarding international and national law relevant to the operations of the Tribunal for the use of judges, staff and defence counsel; and provision of online information services to assist staff, in particular the legal officers and judges, with legal research and greater access to bibliographic information;

(l) Administrative support: processing of financial documents; preparation of the proposed budget for the biennium 2010-2011 and annual performance reports for the biennium 2008-2009; exercise of budgetary control and post management in respect of assessed budget and extrabudgetary resources; formulation of draft administrative responses to external and internal oversight bodies; screening of applications for vacant posts; implementation of staff development and training programmes; arrangement of travel and issuance of tickets and vouchers for judges, staff members, witnesses and other persons; undertaking of property management and inventory control; implementation, operation and maintenance of the information technology infrastructure; purchase and contracting of goods and services; and provision of a safe and secure environment for all VIPs, staff, visitors and detainees.

Table 9
Resource requirements

Category	Resources (thousands of United States dollars)		Posts	
	2008-2009	2010-2011 (before recosting)	2008-2009	2010-2011
Assessed budget				
Post	110 747.6	90 308.3	537	429
Non-post	125 981.4	100 356.4	—	—
Staff assessment	21 998.5	16 304.3	—	—
Subtotal	258 727.5	206 969.0	537	429
Extrabudgetary	3 129.9	1 363.1	—	—
Total	261 857.4	208 332.1	537	429

Table 10
Post requirements

Category	2008-2009 revised appropriation	Proposed reduction		Extrabudgetary		Total	
		1 January 2010	1 January 2011	2008-2009	2010-2011	2008-2009	2010-2011
Professional and above							
ASG	1	—	—	—	—	1	1
D-1	3	1	—	—	—	3	4
P-5	16	(3)	(1)	—	—	16	12
P-4/3	136	2	(19)	—	—	136	119
P-2/1	60	(1)	(16)	—	—	60	43
Subtotal	216	(1)	(36)	—	—	216	179
General Service							
Principal level	10	—	—	—	—	10	10
Other level	176	(1)	(22)	—	—	176	153
Subtotal	186	(1)	(22)	—	—	186	163
Other							
Security Service	135	(4)	(44)	—	—	135	87
Subtotal	135	(4)	(44)	—	—	135	87
Total	537	(6)	(102)	—	—	537	429

70. Resources under posts and staff assessment in the amount of \$90,308,300 and \$16,304,300, respectively, would provide for the continuation of 429 temporary posts required during the biennium 2010-2011. The reduction under posts (\$20,439,300) and staff assessment (\$5,694,200) relates to the gradual abolition or redeployment of 108 posts in 2010 and 2011, consisting of 37 Professional, 23 General Services (Other level) and 48 Security Service posts, and the removal of the biennium 2008-2009 first-year provision for the 128 posts abolished as of 1 January 2009.

71. The phasing out of the functions of posts in the Registry will be implemented in stages throughout the biennium 2010-2011 in line with the completion of first-instance trials and the consequential reduction in the workload, as follows: (a) October 2010: 4 posts (2 P-5, 1 P-4 and 1 General Service (Other level)); (b) November 2010: 5 posts (1 P-2 and 4 Security Service); (c) January 2011: 26 posts (2 P-4, 2 P-3, 4 P-2, 6 General Service (Other level) and 12 Security Service); (d) March 2011: 70 posts (1 P-5, 6 P-4, 11 P-3, 12 P-2, 16 General Service (Other level) and 24 Security Service); and (e) April 2011: 8 posts (8 Security Service). In order to ensure that the Registry has the flexibility to accelerate or decelerate the phasing out of individual posts, it is proposed that 9 posts whose functions will be phased out during 2010 be abolished as of 1 January 2010 and 104 posts whose functions will be phased out during 2011 be abolished as of 1 January 2011, but that funding be provided through general temporary assistance to enable these critical functions to be maintained to support the trials to be held and completed at different dates during the biennium, as described above.

72. As indicated in paragraph 54 above, it is also proposed to redeploy one P-4 and one P-3 post from the Office of the Prosecutor to the Press and Information Office effective 1 January 2010 to strengthen the latter Office, and one P-4 and one P-3 post from the Office of the Prosecutor to the Immediate Office of the Registrar to support the preparatory legal work associated with residual functions.

73. In addition, it is proposed to reclassify the post of Chef de Cabinet of the President of the Tribunal from P-5 to D-1 by redeploying a D-1 post from the Office of the Prosecutor to the Office of the President of the Tribunal, which is part of the Judicial Support Division in the Registry. The reclassification is proposed in view of the increased amount and range and the changed nature of the responsibilities of the post in all its functions, judicial, quasi-judicial and non-judicial.

74. The P-5 post made available from this reclassification would be redeployed from the Judicial Support Division to the Immediate Office of the Registrar to accommodate the post of Chief of that office. The functions of the post would include overseeing the transition to residual functions and the strategy of the Tribunal, as well as overseeing the two Legal Officers (P-4 and P-3) it is proposed to redeploy from the Office of the Prosecutor in support of legal issues associated with residual functions, as described in paragraph 72 above.

75. It is also proposed to reclassify the position of Chief of the General Services Section downward from the P-5 to the P-4 level to better reflect the level of responsibilities of the post in view of the reduction of the office's workload. The reduction of posts will allow the Tribunal to close one of its three buildings in The Hague (Annex building) by the end of March 2011.

76. Non-post requirements in the amount of \$100,356,400 net are requested for the biennium, reflecting a decrease of \$25,625,000. The decrease, which is consistent with the reduced staffing levels associated with the completion of trials, comprises reduced requirements under travel (\$1,126,100), contractual services (\$22,247,700), general operating expenses (\$2,941,300), supplies and materials (\$423,700), furniture and equipment (\$803,600) and alterations to premises (\$78,200), partially offset by an increase under other staff costs mainly due to the provision for continuation of some critical functions of posts which, for reasons described in paragraph 71 above, are proposed for abolition during the biennium.

77. The provision under other staff costs also includes a provision to cover the functions of posts abolished in 2009 and subsequently funded through general temporary assistance which are still needed during the biennium 2010-2011. It is proposed to gradually reduce these requirements during the biennium. The total requirements for the biennium are estimated at 1,952 work-months.

D. Records management and archives

78. In June 2007, an archive strategy meeting was held in The Hague with the participation of the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Archives and Records Management Section and the Office of Legal Affairs of the United Nations to develop and implement a common, comprehensive and coordinated strategy and project plan for archives and records management across the two international tribunals.

79. Resulting from the findings of that meeting, the Tribunal identified the resource requirements for the archives and recordkeeping strategy needed, during the biennium 2008-2009, to ensure the completion of the Tribunal's mandate, both in terms of legacy requirements, including preserving the evidence of the work of the Tribunal for the Organization and making those records available for public access, and the residual mechanisms which will succeed the tribunals. In addition, in order to better support the archives functions of the Tribunal, it was recommended that, for budgetary purposes, all archiving-related functions of each organ of the Tribunal (Chambers, Office of the Prosecutor and the Registry) be consolidated into one centralized administrative unit responsible for overseeing the implementation of the archives strategy and day-to-day functions Tribunal-wide.

80. Based on the above recommendations, the General Assembly approved provisions amounting to \$4,549,100 for the biennium under a new component of the budget of the Tribunal to cover the requirements needed to support archives and recordkeeping activities during the biennium 2008-2009. The requirements included support for various archiving-related projects aimed at: (a) ensuring that the records met the required preservation and archiving standards following the completion of the mandate; and (b) supporting future official access by the entity entrusted with post-Tribunal functions, as well as access by the public at large. In particular, provisions were requested for data input of information about Tribunal records and archives into the TRIM records management database to ensure the smooth transfer of Tribunal records (paper, electronic and audio-visual records) at the closure of the Tribunal. The second substantial area of work for which resources were required was to commence the digitization (scanning) of priority groups of Court records to ensure maximum opportunity for access to public information when the Tribunal completes its mandate. The achievements of the Tribunal records management and archives component during the biennium 2008-2009 are detailed below. In order to facilitate effective implementation of the completion strategy and the strategic plan for the archives of the Tribunal, the Archives and Records Management Unit has focused on centralizing the archiving functions in the Tribunal through its support of all organs. The achievements of the unit include:

(a) The signing, at the end of 2007, by senior management from across all organs and sections of the Tribunal of the final version of a high-level document

entitled "Vision and strategic plan for the archives of the International Tribunal for the Former Yugoslavia". Subsequently, each point contained in that document was systematically implemented. This has resulted in various work-packages and projects throughout the Tribunal, which have been overseen by the Archives and Records Management Unit;

(b) The Archives and Records Management Unit, acting as the requisitioning office for a large archives project, unprecedented in the United Nations, to digitize the audio-visual recording of court proceedings;

(c) Preparation of a report on the assessment of and strategy for managing records in the Business Information Systems and application of judicial support services of the International Tribunal for the Former Yugoslavia, which has formed the basis for managing the judicial records of the Tribunal;

(d) Implementation and oversight of the initiative to preserve the Investigation Teams' records in the Office of the Prosecutor;

(e) Development of a pilot project regarding the authentication of electronic versions of administrative records. This will drastically reduce the need for the transfer and storage of physical records at the end of the mandate;

(f) Supporting various scanning projects throughout the Tribunal with project management, the implementation of records management software and the contribution of staff time. In particular, the Archives and Records Management Unit was responsible for groups of substantive archival records from the Chambers, the Office of the Prosecutor and the Registry being scanned for preservation and access;

(g) Revision of the Tribunal's records retention schedules. These are currently being reviewed by the Archives and Records Management Section and the Office of Legal Affairs at United Nations Headquarters and will establish what each office of the Tribunal is responsible for keeping and for what duration;

(h) Facilitation of the disposal of non-archival records that were set for destruction in accordance with the United Nations policy on retention of administrative records;

(i) Supporting data-entry initiatives throughout the Tribunal through the implementation of records management software, the configuration of standards and the allocation of staff to assist in areas with deficiencies;

(j) Participation in the joint tribunals' archives strategy meetings with the International Criminal Tribunal for Rwanda and the Archives and Records Management Section, resulting in the streamlining of initiatives between the tribunals and creating greater efficiency;

(k) Supporting the work of the Advisory Committee on the Archives of the Tribunals for the Former Yugoslavia and Rwanda.

81. During the biennium 2010-2011, the Archives and Records Management Unit intends to continue implementing initiatives already under way in their next phases, as well as the strategic plan for the archives of the Tribunal. To this end the Archives and Records Management Unit will:

(a) Focus on bringing the archives and records of the Office of the Prosecutor into line with those of the other organs of the Tribunal;

(b) Facilitate online access to the digital version of recordings of courtroom proceedings, while continuing the digitization process;

(c) Continue to store the Tribunal's archives (both in physical and electronic form) in a consolidated, well organized and easily searchable archival database;

(d) Offer continuing support for the creation of redacted versions of confidential material (in all formats) in order to provide a public version of the Tribunal's archives via the Tribunal's online judicial database;

(e) Play a central role in developing policy on how the Tribunal, the residual mechanism and the United Nations will deal with the ongoing declassification and disclosure of confidential documents as their status changes in the coming years;

(f) Ensure that a standardized approach to archiving is developed within the Tribunal, the International Criminal Tribunal for Rwanda and the Archives and Records Management Section.

Table 11

Resource requirements

Category	Resources (thousands of United States dollars)		Posts	
	2008, 2009	2010, 2011 (before recosting)	2008, 2009	2010, 2011
Assessed budget				
Non-post	4 549.1	3 786.3	—	—
Total	4 549.1	3 786.3	—	—

82. The non-post requirements, amounting to \$3,786,300, consist of general temporary assistance to cope with the increase in records and archives-related work as the Tribunal moves towards closure (\$1,831,300); consultants and experts to support the implementation of the archives strategy framework and migration to the TRIM platform and to advise the Tribunal on issues associated with digital preservation (\$60,000); official travel for two staff members to attend three meetings between representatives of the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the Archives and Records Management Section in Arusha and New York (\$25,000); contractual services for the digitalization of audio-visual records (\$510,000); and acquisition of additional electronic storage required to store the digitalized audio-visual records and new software for an enterprise-level infrastructure, database and end-user interface to support the migration of data from the various database and information systems into a centralized database (\$1,360,000).

E. Liabilities for payment of pensions to judges and surviving spouses

83. The permanent judges of the Tribunal are eligible to retirement benefits in accordance with the conditions of service and compensation applicable to the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. At present, pension benefits payable to former judges are provided for in the biennial budget of the Tribunal. However, the current practice would not be a viable option after the closure of the Tribunal and therefore

an actuarial study was conducted in September 2009 by a consulting actuary to determine the accrued liability with respect to this entitlement. Based on the results of the actuarial valuation of the pension scheme for judges at the Tribunal the present value of the accrued liability for future pension benefits as at 31 December 2011 relating to 15 former judges and one beneficiary in receipt of pensions and 13 current judges is estimated to be \$20,171,000.

84. In response to the request for financing of this liability in the context of the proposed budget for the biennium 2008-2009, the General Assembly, in resolution 62/230, requested the Secretary-General to include information on specific parameters of the management of the funds to be appropriated to meet future requirements for pension benefits of the judges of the International Tribunal for the Former Yugoslavia and eligible beneficiaries in a future report. In the same resolution, the General Assembly decided to revert to the issue of funding of the pension-related liabilities of the International Tribunal for the Former Yugoslavia at its sixty-fourth session.

85. Based on consultations carried out with investment officials of the United Nations Joint Staff Pension Fund, it has been decided that it would be prudent to adopt the investment policy of the Fund, details of which are provided below:

(a) The envisaged investment policy would reflect the strategic purpose of funding liabilities and would take into account the safety, profitability, convertibility and liquidity of investments;

(b) Safety would be achieved by ensuring adequate asset class, geographical, currency, sector and industry diversification, by carefully researching and documenting investment recommendations and constantly reviewing the portfolio in order to take advantage of the unsynchronized economic cycles, market and currency movements. Asset classes are all subject to market risk and safety is a relative term in this regard;

(c) Profitability would require that each investment at the time of purchase is expected to earn a positive total return, taking into account potential risk, in particular market risk, which is common to all securities of the same general class and commonly can be mitigated but not eliminated by diversification;

(d) Convertibility is the ability to readily convert investments into liquid currencies. Convertibility facilitates payments in local currencies. The fiduciary responsibility mandates that, owing to the United States dollar-based market valuation of funds and the United States dollar-based appraisal of the Fund's actuarial soundness, all investments should be readily and fully convertible into United States dollars;

(e) Liquidity is the ready marketability of the assets in recognized sound, stable and competitive exchanges or markets. Liquidity is required to ensure that the portfolio can be restructured in the shortest possible time in order to enhance total return and/or to minimize potential losses. It is noted that there may be attractive investment opportunities that require long-term commitments and that investments in longer-term asset classes, such as real estate, would require the concurrence of the representative of the Secretary-General;

(f) Funds would be managed by the Investment Management Service of the United Nations Joint Staff Pension Fund and follow the established practice of the

United Nations University Endowment Fund in that funds would be managed by the Investment Management Service but would not be pooled with the United Nations Joint Staff Pension Fund proper.

86. With regard to the liabilities pertaining to after-service health insurance, it is recalled that the General Assembly, in resolution 62/230, endorsed the recommendation of the Advisory Committee on Administrative and Budgetary Questions contained in its report on the proposed budgets for the biennium 2008-2009 of the International Tribunal for the Former Yugoslavia and of the International Criminal Tribunal for Rwanda (A/62/578), among other recommendations, that the proposed funding for after-service health insurance of the Tribunals be taken up in the context of the overall review of the question of after-service health insurance. In this regard, based on a roll-forward actuarial valuation, a provision of \$15.1 million, representing the present value of the accrued after-service health insurance liability of future benefits as at 31 December 2008 for the International Tribunal for the Former Yugoslavia, has been included in the report of the Secretary-General entitled "Liabilities and proposed funding for after-service health insurance benefits" (A/64/366), which will be considered by the General Assembly as its current session.

Table 12
Resource requirements

Category	Resources (thousands of United States dollars)		Posts	
	2008-2009	2010-2011 (before recosting)	2008-2009	2010-2011
Assessed budget				
Non-post	—	20 171.0	—	—
Total	—	20 171.0	—	—

87. The resource requirements for the financing of the accrued liability amount to \$20,171,000 for the payment of pensions to judges and surviving spouses.

Table 13

Summary of follow-up action taken to implement relevant recommendations of the oversight bodies and the Advisory Committee on Administrative and Budgetary Questions

<i>Brief description of the recommendation</i>	<i>Action taken to implement the recommendation</i>
Board of External Auditors (A/63/5/Add.12)	
The Tribunal agreed with the Board's recommendation to monitor further the whole process of cancellation of unliquidated obligations (para. 22).	The Tribunal's standard procedures provide for the thorough review of obligations every quarter of the year. In addition, in response to the audit observation, the Chief Administrative Officer has reminded all certifying officers, the Procurement Section and the Finance Section about the importance of accurate review and timely liquidation of obligations that are no longer required.
The Tribunal agreed with the Board's recommendation to review its present prison cell requirements and lease only the optimum number of prison cells as may be determined by applicable guidelines (para. 24).	The Tribunal is in the process of relinquishing cells that are no longer required. As cells can be returned to the Government of the Netherlands only in groups of 20 or 12 cells, the Tribunal does have excess capacity at times. Twenty cells were returned during 2009 and it is anticipated that an additional 12 will be returned by late 2010.
The Board recommended that the Tribunal consider making a provision for delays in the collection of outstanding contributions pursuant to paragraph 33 of the United Nations system accounting standards (para. 28).	The General Assembly, in its resolution 53/204, endorsed the comments made by the Advisory Committee on Administrative and Budgetary Questions in its report (A/53/513), including the Advisory Committee's view that assessed contributions are collectable until the General Assembly decides otherwise.
	Further, in its resolution 61/233 B, the Assembly reiterated that the issue of outstanding assessed contributions was a policy matter of the General Assembly. The Tribunal is therefore not in a position to implement the recommendation, which falls under the purview of the Assembly.
	The Organization's policies with regard to the accounting treatment of uncollected assessed contributions are in compliance with General Assembly decisions and the United Nations system accounting standards.
The Board recommended that the Tribunal develop a proposed financing plan in order to settle end-of-service liabilities relating to staff members at the time of the closure of the operations of the Tribunal (para. 40).	The Tribunal's budget proposal for the biennium 2008-2009 included provisions, based on actuarial valuations, for after-service health insurance and judges' pensions in order to finance the accrued liabilities. However, in its

*Brief description
of the recommendation*

*Action taken to implement
the recommendation*

The Board recommended that the Tribunal reconsider the disclosure of the statement of cash flows to include its share in the cash pool (para. 44).

resolutions 61/264 and 62/230, the General Assembly decided to revert to the question of funding for after-service health insurance at its sixty-third session and to the issue of funding the pension-related liabilities of the Tribunal at its sixty-fourth session. Thus, there are currently no provisions to meet the aforementioned liabilities. The 2010-2011 budget proposal includes a provision for payment of pensions to judges and their surviving spouses.

The Secretary-General's report on liabilities and proposed funding for after-service health insurance benefit has been prepared and submitted to the General Assembly at its sixty-fourth session (A/64/366). Appropriate action will be taken on the basis of decisions made by the Assembly.

With regard to the liabilities relating to annual leave and repatriation grants, these are considered part of common staff costs in accordance with established procedures and therefore no separate provisions are made.

Full implementation of the recommendation is dependent on consideration by the General Assembly.

The current presentation of cash pools follows long-established practices that have been accepted by successive Boards of Auditors in all financial statements that have been certified.

Under the United Nations system accounting standards, investments have been defined to specifically include those under the cash pool. As such, the cash pool is defined as an integral part of "investment" and changes in the cash pool constitute changes in investment activities, which are therefore classified under "Cash flows from investing activities", in accordance with appendix IV A of the United Nations system accounting standards. As the presentation of the cash pool as part of investing activities in the statement of cash flows is in compliance with the accounting standards, the Tribunal is not in a position to implement the recommendation.

*Brief description
of the recommendation*

The Tribunal agreed with the Board's recommendation to continue to explore ways and means of retaining existing staff in order to ensure the successful completion of its mandate (para. 49).

The Tribunal agreed with the Board's recommendation to adopt a similar remuneration package for defence counsels handling cases on appeal (para. 53).

*Action taken to implement
the recommendation*

The General Assembly did not approve the provision of a retention incentive for Tribunal staff during its sixty-third session. However, it requested the Secretary-General to use the existing contractual frameworks to offer contracts to staff, in line with the trial schedule.

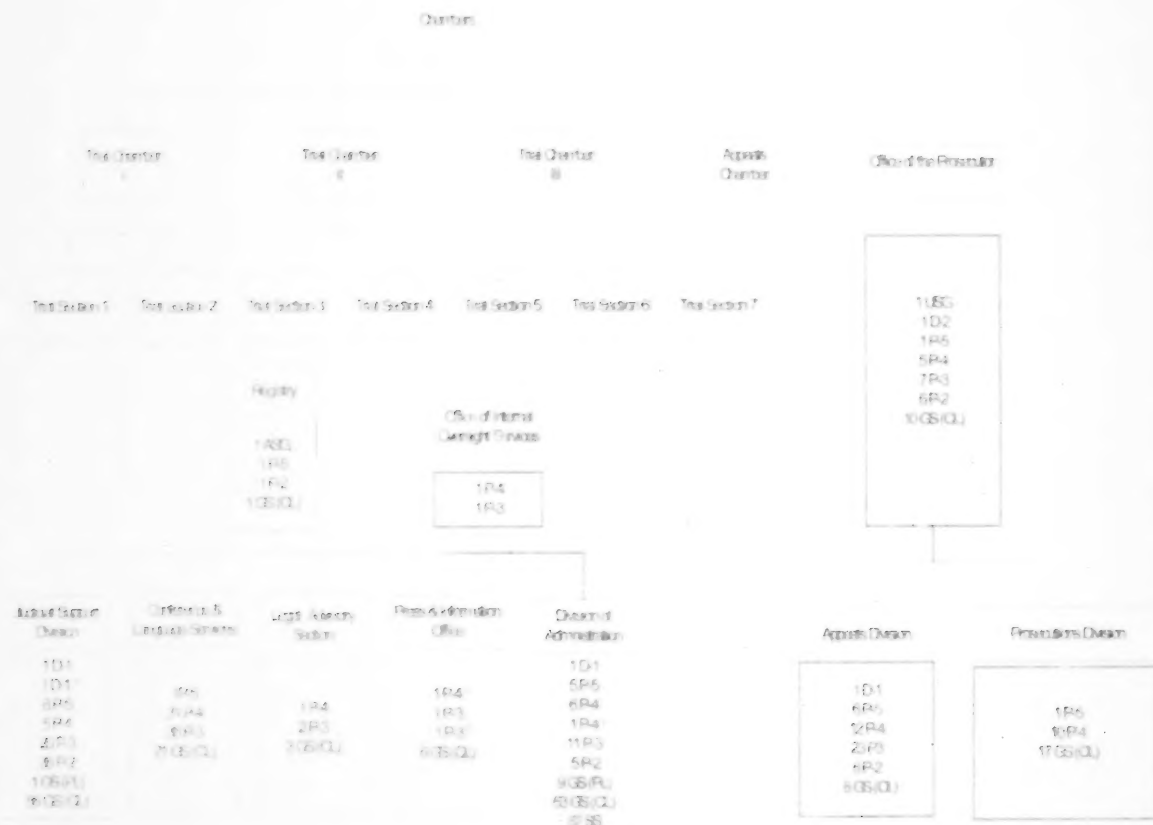
The Tribunal, while welcoming the above measure, is of the view that the extension of contracts by itself will not be sufficient to mitigate the high rate of attrition expected during the last years of the Tribunal. The Tribunal will continue to develop proposals for the consideration of the General Assembly and the International Civil Service Commission to encourage staff to remain with the Tribunal until such time as their services are no longer needed.

The Tribunal is in agreement with the recommendation and is currently working on an appeals legal aid policy of a lump-sum nature. The concept has been discussed with the defence counsels, who have indicated acceptance in principle. A draft policy is therefore being prepared and will shortly be circulated to the Association for Defence Counsel Practising Before the International Tribunal for the Former Yugoslavia.

Full implementation of the recommendation is expected by the end of the first quarter of 2010.

International Tribunal for the Former Yugoslavia

Organizational structure and post distribution for the biennium 2010-2011



Abbreviations: GS, General Service; PL, Principal level; OL, Other level.

¹ Reclassification.

² Redeployment from the Office of the Prosecutor.